THE

WORKS

OF

FRANCIS BACON,

BARON OF VERULAM,

VISCOUNT ST. ALBAN,

AND

Lord High Chancellor of England.

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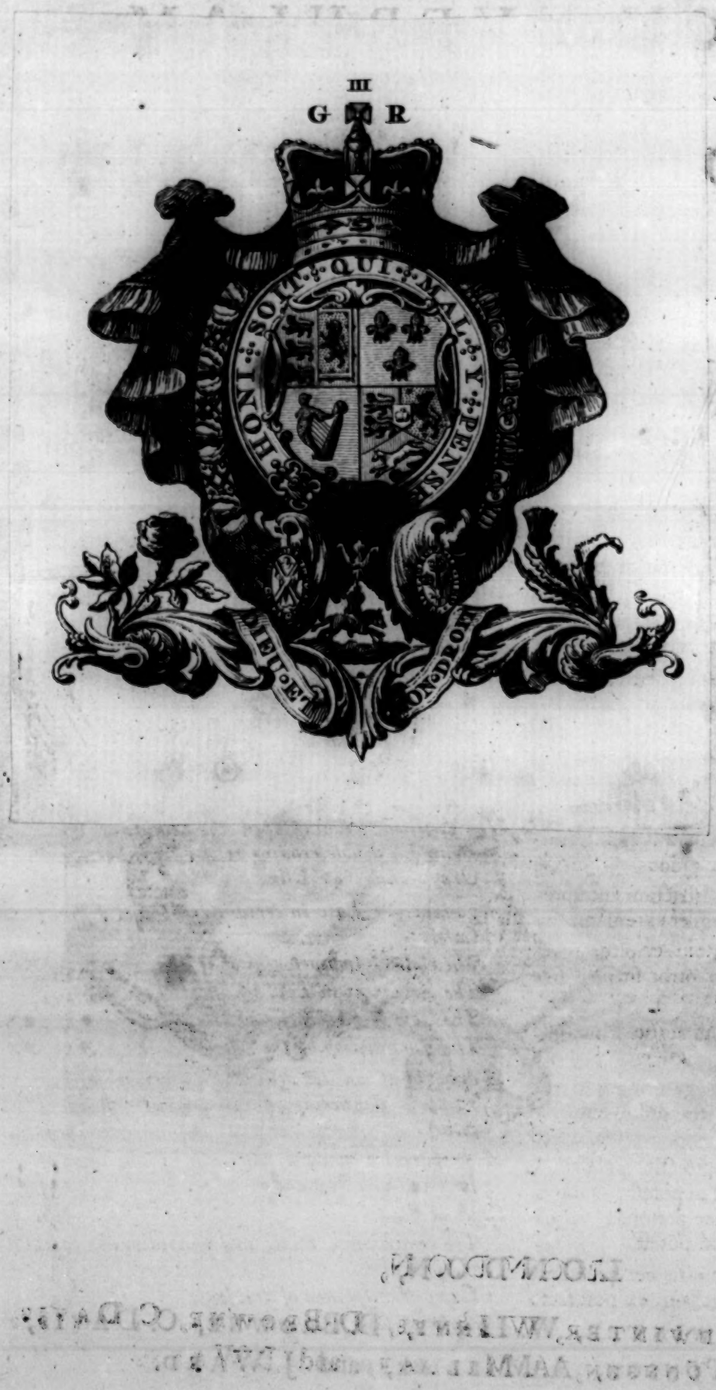
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LAW TRACTS.

I. BLACKWELL'S ENGINEERING COMPANY

THE

ELEMENTS

OF THE

COMMON LAWS

OF

ENGLAND.

CONTAINING

I.

A Collection of ſome of the principal RULES and MAXIMS of the *Common Law*, with their Latitude and Extent.

II.

The USE of the *Common Law* for Preſervation of our Perſons, Goods, and Good Names; according to the Laws and Cuſtoms of this Land.

TO HER

SACRED MAJESTY.

I Do here moſt humbly preſent and dedicate to your ſacred Majeſty a ſheaf and cluſter of fruit of the good and favourable ſeaſon, which by the influence of your happy government we enjoy; for if it be true that *ſilent leges inter arma*, it is alſo as true, that your Majeſty is in a double reſpect the life of our laws; once, becauſe without your authority they are but *litera mortua*; and again, becauſe you are the life of our peace, without which laws are put to ſilence. And as the vital ſpirits do not only maintain and move the body, but alſo contend to perfect and renew it; ſo your ſacred Majeſty, who is *anima legis*, doth not only give unto your laws force and vigour; but alſo hath been careful of their amendment and reforming; wherein your Majeſty's proceeding may be compared, as in that part of your government (for if your government be conſidered in all the parts, it is incomparable) with the former doings of the moſt excellent Princes that ever have reigned, whoſe ſtudy altogether hath been always to adorn and honour times of peace with the amendment of the policy of their laws. Of this proceeding in Auguſtus Cæſar the teſtimony yet remains.

Pace data terris, animum ad civilia vertit
Jura ſuum; legeſque tulit juſtiſſimus auctor.

Hence was collected the difference between *geſta in armis* and *acta in toga*, whereof Cicero diſputeth thus:

Ecquid eſt, quod tam proprie dici poſſit actum ejus, qui togatus in republica cum poteſtate imperioque verſatus ſit, quam lex? quaere acta Gracchi: leges Sempro-
niae proferentur. Quaere Syllae: Corneliae. Quid? Cn. Pompeii tertius con- Phil. I. c. 7.
ſulatus in quibus actis conſiſtit? nempe in legibus. A Caeſare ipſo ſi quaereres quid-
nam egiſſet in urbe, et in toga: leges multas ſe reſponderet, et praeclaras tuliſſe.

The ſame deſire long after did ſpring in the emperor Juſtinian, being rightly called *ultimus imperatorum Romanorum*, who having peace in the heart of his empire, and making his wars proſperouſly in the remote places of his dominions by his lieutenants, choſe it for a monument and honour of his government, to reviſe the Roman laws, from infinite volumes and much repugnancy, into one competent and uniform corps of law; of which matter himſelf doth ſpeak glorioufly, and yet aptly, calling it, *proprium et ſanctiſſimum templum juſtitiae conſecratum*: a work of great excellency indeed, as may well appear, in that France, Italy and Spain, which have long ſince ſhaken off the yoke of the Roman empire, do yet nevertheleſs continue to uſe the policy of that law: but more excellent had the work been, ſave that the more ignorant and obſcure time undertook to correct the more learned and flouriſhing time. To conclude with the domeſtick example of one of your Majeſty's royal anceſtors: King Edward I, your Majeſty's famous progenitor, and the principal law-giver of our nation, after he had in his younger years given himſelf ſatisfaction in the glory of arms, by the enterprize of the Holy Land, and having inward peace (otherwiſe than for the invaſions which himſelf made upon Wales and Scotland, parts far diſtant from the centre of the realm) he bent himſelf to endow his ſtate with ſundry notable and fundamental laws, upon which the government hath ever ſince principally reſted. Of this example, and others the like, two reaſons may be given; the one, becauſe that Kings, which, either by the moderation of their natures, or the maturity of their years and judgment, do temper their magnanimity with juſtice, do wiſely conſider and conceive of the exploits of ambitious wars, as actions rather great than good; and ſo, diſtaſted with that courſe of winning honour, they convert their minds rather to do ſomewhat for the better uniting of human ſociety, than for the diſſolving or diſturbing of the ſame. Another reaſon is, becauſe times of peace, for the moſt part drawing with them abundance of wealth, and fineſſe of cunning, do draw alſo, in further conſequence, multitude of ſuits and controverſies, and abuſes of law by evaſions and devices; which inconve-

niences in ſuch time growing more general, do more inſtantly ſollicit for the amendment of laws to reſtrain and repreſs them.

Your Majeſty's reign having been bleſſed from the Higheſt with inward peace, and falling into an age, wherein, if ſcience be increaſed, conſcience is rather decayed; and if mens wits be great, their wills be greater; and wherein alſo laws are multiplied in number, and ſlackened in vigour and execution; it was not poſſible but that not only ſuits in law ſhould multiply and increaſe (whereof a great part are always unjuſt) but alſo that all the indirect courſes and practices to abuſe law and juſtice ſhould have been much attempted, and put in ure, which no doubt had bred greater enormities, had they not, by the royal policy of your Majeſty, by the cenſure and foreſight of your Council-table and Star-chamber, and by the gravity and integrity of your benches, been repreſſed and reſtrained: for it may be truly obſerved, that, as concerning frauds in contracts, bargains, and aſſurances, and abuſes of laws by delays, covins, vexations, and corruptions in informers, jurors, miniſters of juſtice, and the like, there have been ſundry excellent ſtatutes made in your Majeſty's time, more in number, and more politick in proviſion, than in any of your Majeſty's predeceſſors times.

But I am an unworthy witneſs to your Majeſty of an higher intention and project, both by that which was publiſhed by your Chancellor in full parliament from your royal mouth, in the five and thirtieth of your happy reign; and much more by that which I have been ſince vouchſafed to underſtand from your Majeſty, imparting a purpoſe for theſe many years infuſed into your Majeſty's breaſt, to enter into a general amendment of the ſtate of your laws, and to reduce them to more brevity and certainty, that the great hollowneſs and unſafety in aſſurances of lands and goods may be ſtrengthened, the ſwerving penalties, that lie upon many ſubjects, removed, the execution of many profitable laws revived, the judge better directed in his ſentence, the counſellor better warranted in his counſel, the ſtudent eaſed in his reading, the contentious ſuitor, that ſeeketh but vexation, diſarmed, and the honeſt ſuitor, that ſeeketh but to obtain his right, relieved; which purpoſe and intention, as it did ſtrike me with great admiration when I heard it, ſo it might be acknowledged to be one of the moſt choſen works, and of the higheſt merit and beneficence towards the ſubject, that ever entered into the mind of any King; greater than we can imagine, becauſe the imperfections and dangers of the laws are covered under the clemency and excellent temper of your Majeſty's government. And though there be rare precedents of it in government, as it cometh to paſs in things ſo excellent, there being no precedent full in view but of Juſtinian; yet I muſt ſay, as Cicero ſaid to Cæſar, *Nihil vulgare te dignum videri poteſt*; and as it is no doubt a precious ſeed ſown in your Majeſty's heart by the hand of God's divine Majeſty, ſo, I hope, in the maturity of your Majeſty's own time, it will come up and bear fruit. But to return thence whither I have been carried; obſerving in your Majeſty, upon ſo notable proofs and grounds, this diſpoſition in general of a prudent and royal regard to the amendment of your laws, and having by my private labour and travel collected many of the grounds of the common law, the better to eſtabliſh and ſettle a certain ſenſe of law, which doth now too much waver in incertainty, I conceived the nature of the ſubject, beſides my particular obligation, was ſuch, as I ought not to dedicate the ſame to any other, than to your ſacred Majeſty; both becauſe though the collection be mine, yet the laws are yours; and becauſe it is your Majeſty's reign that hath been as a goodly ſeaſonable ſpring weather to the advancing of all excellent arts of peace. And ſo concluding with a prayer anſwerable to the preſent argument, which is, that God will continue your Majeſty's reign in a happy and renowned peace, and that he will guide both your policy and arms to purchaſe the continuance of it with ſurety and honour, I moſt humbly crave pardon, and commend your Majeſty to the divine preſervation.

Your Sacred MAJESTY'S *moſt humble and obedient ſubject and ſervant,*

FRANCIS BACON.

THE PREFACE.

I Hold every man a debtor to his profeſſion; from the which as men of courſe do ſeek to receive countenance and profit, ſo ought they of duty to endeavour themſelves, by way of amends, to be a help and ornament thereunto. This is performed in ſome degree by the honeſt and liberal practice of a profeſſion, when men ſhall carry a reſpect not to deſcend into any courſe that is corrupt and unworthy thereof, and preſerve themſelves free from the abuſes wherewith the ſame profeſſion is noted to be infected: but much more is this performed if a man be able to viſit and ſtrengthen the roots and foundation of the ſcience itſelf; thereby not only gracing it in reputation and dignity, but alſo amplifying it in perfection and ſubſtance. Having therefore from the beginning come to the ſtudy of the laws of this realm, with a deſire no leſs (if I could attain unto it) that the ſame laws ſhould be the better for my induſtry, than that myſelf ſhould be the better for the knowledge of them; I do not find that by mine own travel, without the help of authority, I can in any kind confer ſo profitable an addition unto that ſcience, as by collecting the rules and grounds diſperſed throughout the body of the ſame laws; for hereby no ſmall light will be given in new caſes, wherein the authorities do ſquare and vary, to confirm the law, and to make it received one way; and in caſes wherein the law is cleared by authority, yet nevertheleſs to ſee more profoundly into the reaſon of ſuch judgments and ruled caſes, and thereby to make more uſe of them for the deciſion of other caſes more doubtful: ſo that the incertainty of law, which is the principal and moſt juſt challenge that is made to the laws of our nation at this time, will, by this new ſtrength laid to the foundation, be ſomewhat the more ſettled and corrected. Neither will the uſe hereof be only in deciding of doubts, and helping ſoundneſs of judgment, but further in gracing of argument, in correcting unprofitable ſubtlety, and reducing the ſame to a more ſound and ſubſtantial ſenſe of law; in reclaiming vulgar errors, and generally the amendment in ſome meaſure of the very nature and complexion of the whole law: and therefore the concluſions of reaſons of this kind are worthily and aptly called by a great civilian *legum leges*, laws of laws, for that many *placita legum*, that is, particular and poſitive learnings of laws, do eaſily decline from a good temper of juſtice, if they be not rectified and governed by ſuch rules.

Now for the manner of ſetting down of them, I have in all points, to the beſt of my underſtanding and foreſight, applied myſelf not to that which might ſeem moſt for the oſtentation of mine own wit or knowledge, but to that which may yield moſt uſe and profit to the ſtudents and profeſſors of our laws.

And therefore, whereas theſe rules are ſome of them ordinary and vulgar, that now ſerve but for grounds and plain ſongs to the more ſhallow and impertinent ſort of arguments; others of them are gathered and extracted out of the harmony and congruity of caſes, and are ſuch as the wiſeſt and deepeſt ſort of lawyers have in judgment and uſe, though they be not able many times to expreſs and ſet them down.

For the former ſort, which a man that ſhould rather write to raiſe an high opinion of himſelf, than to inſtruct others, would have omitted, as trite and within every man's compaſs; yet nevertheleſs I have not affected to neglect them, but have choſen out of them ſuch as I thought good: I have reduced them to a true application, limiting and defining their bounds, that they may not be read upon at large, but reſtrained to a point of difference: for as, both in the law and other ſciences, the handling of queſtions by common-place, without aim or application, is the weakeſt; ſo yet nevertheleſs many common principles and generalities are not to be contemned, if they be well derived and

deduced

deduced into particulars, and their limits and excluſions duly aſſigned: for there be two contrary faults and extremities in the debating and ſifting out of the law, which may be beſt noted in two ſeveral manner of arguments: Some argue upon general grounds, and come not near the point in queſtion; others, without laying any foundation of a ground or difference, do looſely put caſes, which, though they go near the point, yet being ſo ſcattered, prove not, but rather ſerve to make the law appear more doubtful, than to make it more plain.

Secondly, whereas ſome of theſe rules have a concurrence with the civil Roman law, and ſome others a diverſity, and many times an oppoſition, ſuch grounds which are common to our law and theirs I have not affected to diſguiſe into other words than the civilians uſe, to the end they might ſeem invented by me, and not borrowed or tranſlated from them: no, but I took hold of it as a matter of greater authority and majeſty, to ſee and conſider the concordance between the laws penned, and as it were dictated *verbatim*, by the ſame reaſon. On the other ſide, the diverſities between the civil Roman rules of law and ours, happening either when there is ſuch an indifferency of reaſon ſo equally balanced, as the one law embraceth one courſe, and the other the contrary, and both juſt, after either is once poſitive and certain; or where the laws vary in regard of accommodating the law to the different conſiderations of eſtate, I have not omitted to ſet down.

Thirdly, whereas I could have digeſted theſe rules into a certain method or order, which, I know, would have been more admired, as that which would have made every particular rule, through coherence and relation unto other rules, ſeem more cunning and deep; yet I have avoided ſo to do, becauſe this delivering of knowledge in diſtinct and disjoined aphoriſms doth leave the wit of man more free to turn and toſs, and make uſe of that which is ſo delivered to more ſeveral purpoſes and applications; for we ſee that all the ancient wiſdom and ſcience was wont to be delivered in that form, as may be ſeen by the parables of Solomon, and by the aphoriſms of Hippocrates, and the moral verſes of Theognis and Phocylides; but chiefly the precedent of the civil law, which hath taken the ſame courſe with their rules, did confirm me in my opinion.

Fourthly, whereas, I know very well, it would have been more plauſible and more current, if the rules, with the expoſition of them, had been ſet down either in Latin or in Engliſh; that the harſhneſs of the language might not have diſgraced the matter; and that civilians, ſtateſmen, ſcholars, and other ſenſible men might not have been barred from them; yet I have forſaken that grace and ornament of them, and only taken this courſe: the rules themſelves I have put in Latin, not purified further than the propriety of the terms of the law would permit; which language I choſe as the briefeſt to contrive the rules compendiouſly, the apteſt for memory, and of the greateſt authority and majeſty to be avouched and alledged in argument: and for the expoſitions and diſtinctions, I have retained the peculiar language of our law, becauſe it ſhould not be ſingular among the books of the ſame ſcience, and becauſe it is moſt familiar to the ſtudents and profeſſors thereof, and becauſe that it is moſt ſignificant to expreſs conceits of law; and to conclude, it is a language wherein a man ſhall not be enticed to hunt after words, but matter; and for the excluding of any other than profeſſed lawyers, it was better manners to exclude them by the ſtrangeneſs of the language, than by the obſcurity of the conceit; which is as though it had been written in no private and retired language, yet by thoſe that are not lawyers would for the moſt part not have been underſtood, or, which is worſe, miſtaken.

Fifthly, whereas I might have made more flouriſh and oſtentation of reading, to have vouched the authorities, and ſometimes to have enforced or noted upon them, yet I have abſtained from that alſo; and the reaſon is, becauſe I judged it a matter undue and prepoſterous to prove rules and maxims; wherein I had the example of Mr. Littleton and Mr. Fitzherbert, whoſe writings are the inſtitutions of the laws of England; whereof the one forbeareth to vouch any authority altogether; the other never reciteth a book, but

when

when he thinketh the caſe ſo weak of credit in itſelf, as it needs a ſurety; and theſe two I did far more eſteem than Mr. Perkins or Mr. Staundford, that have done the contrary. Well will it appear to thoſe that are learned in the laws, that many of the caſes are judged caſes, either within the books, or of freſh report, and moſt of them fortified by judged caſes, and ſimilitude of reaſon; though in ſome few caſes I did intend expreſly to weigh down the authority by evidence of reaſon, and therein rather to correct the law, than either to ſooth a received error, or, by unprofitable ſubtlety which corrupteth the ſenſe of law, to reconcile contrarieties. For theſe reaſons I reſolved not to derogate from the authority of the rules, by vouching of any of the authorities of the caſes, though in mine own copy I had them quoted: for although the meanneſs of mine own perſon may now at firſt extenuate the authority of this collection, and that every man is adventurous to controul; yet ſurely, according to Gamaliel's reaſon, if it be of weight, time will ſettle and authorize it; if it be light and weak, time will reprove it. So that, to conclude, you have here a work without any glory of affected novelty, or of method, or of language, or of quotations and authorities, dedicated only to uſe, and ſubmitted only to the cenſure of the learned, and chiefly of time.

Laſtly, there is one point above all the reſt I account the moſt material for making theſe reaſons indeed profitable and inſtructing; which is, that they be not ſet down alone, like ſhort dark oracles, which every man will be content ſtill to allow to be true, but in the mean time they give little light or direction; but I have attended them (a matter not practiſed, no not in the civil law to any purpoſe; and for want whereof, indeed, the rules are but as proverbs, and many times plain fallacies) with a clear and perſpicuous expoſition, breaking them into caſes, and opening them with diſtinctions, and ſometimes ſhewing the reaſons whereupon they depend, and the affinity they have with other rules. And though I have thus, with as good diſcretion and foreſight as I could, ordered this work, and, as I might ſay, without all colours or ſhews, huſbanded it beſt to profit; yet, nevertheleſs, not wholly truſting to mine own judgment, having collected three hundred of them, I thought good, before I brought them all into form, to publiſh ſome few, that, by the taſte of other mens opinions in this firſt, I might receive either approbation in mine own courſe, or better advice for the altering of the other which remain: for it is great reaſon that that which is intended to the profit of others, ſhould be guided by the conceits of others.

MAXIMS of the LAW

THE

MAXIMS of the LAW.

REGVLA I.

In jure non remota cauſa ſed proxima ſpectatur.

IT were infinite for the law to judge the cauſes of cauſes, and their impulſions one of another; therefore it contenteth itſelf with the immediate cauſe, and judgeth of acts by that, without looking to any further degree.

As if an annuity be granted *pro conſilio impenſo et impendendo*, and the grantee commit treaſon, whereby he is impriſoned, ſo that the grantor cannot have acceſs unto him for his counſel; yet nevertheleſs the annuity is not determined by this *non-feaſance*; yet it was the grantee's act and default to commit the treaſon, whereby the impriſonment grew: but the law looketh not ſo far, but excuſeth him, becauſe the not giving counſel was compulſory, and not voluntary, in regard of the impriſonment. 6 H. 8. Dy. 2.

So if a parſon make a leaſe, and be deprived, or reſign, the ſucceſſors ſhall avoid the leaſe; and yet the cauſe of deprivation, and more ſtrongly of a reſignation, moved from the party himſelf: but the law regardeth not that, becauſe the admiſſion of the new incumbent is the act of the ordinary. Litt. cap. Diſcon. 2 H. 4. 5. 26 H. 8. 2.

So if I be ſeiſed of an advowſon in groſs, and an uſurpation be had againſt me, and at the next avoidance I uſurp arere, I ſhall be remitted: and yet the preſentation, which is the act remote, is mine own act; but the admiſſion of my clerk, whereby the inheritance is reduced to me, is the act of the ordinary.

So if I covenant with I. S. a ſtranger, in conſideration of natural love to my ſon, to ſtand ſeized to the uſe of the ſaid I. S. to the intent he ſhall infeoff my ſon; by this no uſe ariſeth to I. S. becauſe the law doth reſpect that there is no immediate conſideration between me and I. S. 5 H. 7, 25.

So if I be bound to enter into a ſtatute before the mayor of the ſtaple at ſuch a day, for the ſecurity of a hundred pound, and the obligee, before the day, accept of me a leaſe of an houſe in ſatisfaction; this is no plea in debt upon my obligation: and yet the end of that ſtatute was but ſecurity of money; but becauſe the entring into this ſtatute itſelf, which is the immediate act whereunto I am bound, is a corporal act which lieth not in ſatisfaction, therefore the law taketh no conſideration that the remote intent was for money.

So if I make a feoffment in fee, upon condition that the feoffee ſhall infeoff over, and the feoffee be diſſeiſed, and a deſcent caſt, and then the feoffee bind himſelf in a ſtatute, which ſtatute is diſcharged before the recovery of the land: this is no breach of the condition, becauſe the land was never liable to the ſtatute, and the poſſibility that it ſhould be liable upon the recovery, the law doth not reſpect. M. 40. & 41. El. Julius Winnington's Caſe, ore report per le treſreverend Juge le Snr Coke. lib. 2.

So if I enfeoff two, upon condition to enfeoff, and one of them take a wife, the condition is not broken; and yet there is a remote poſſibility that the jointenant may die, and then the feme is entitled to dower.

So if a man purchaſe land in fee-ſimple, and die without iſſue; in the firſt degree the law reſpecteth dignity of ſex, and not proximity; and therefore the remote heir on the part of the father ſhall have it, before the near heir on the part of the mother: but, in any degree paramount, the firſt the law reſpecteth it not, and therefore the near heir by the grandmother on the part of the father ſhall have it, before the remote heir of the grandfather on the part of the father.

This rule faileth in covinous acts, which though they be conveyed through many degrees and reaches, yet the law taketh heed to the corrupt beginning, and counteth all as one entire act. Plowd. 450.

As if a feoffment be made of lands held by knights ſervice to I. S. upon condition that within a certain time he ſhall infeoff I. D. which feoffment to I. D. ſhall be to the uſe of the wife of the firſt feoffer for her jointure, etc. this feoffment is within the ſtatute of 32 H. VIII. *nam dolus circuitu non purgatur.*

In

In like manner this rule holdeth not in criminal acts, except they have a full interruption; becauſe when the intention is matter of ſubſtance, and that which the law doth principally behold, there the firſt motive will be principally regarded, and not the laſt impulſion. As if I. S. of malice prepenſed diſchargeth a piſtol at I. D. and miſſeth him, whereupon he throws down his piſtol and flies, and I. D. purſueth him to kill him, whereupon he turneth and killeth I. D. with a dagger; if the law ſhould conſider the laſt impulſive cauſe, it ſhould ſay that it was in his own defence; but the law is otherwiſe, for it is but a purſuance and execution of the firſt murderous intent.

44 Ed. 3. 44.

But if I. S. had fallen down, his dagger drawn, and I. D. had fallen by haſte upon his dagger, there. I. D. had been *felo de ſe*, and I. S. ſhall go quit.

Alſo you may not confound the act with the execution of the act; nor the entire act with the laſt part, or the conſummation of the act.

Lit. cap. de diſc.

For if a diſſeiſor enter into religion, the immediate cauſe is from the party, though the deſcent be caſt in law; but the law doth but execute the act which the party procureth, and therefore the deſcent ſhall not bind, *et ſic e converſo*.

21 Eliz.

If a leaſe for years be made for rendering a rent, and the leſſee make a feoffment of part, and the leſſor enter, the immediate cauſe is from the law in reſpect of the forfeiture, though the entry be the act of the party; but that is but the purſuance and putting in execution of the title which the law giveth: and therefore the rent or condition ſhall be apportioned.

24 H. 8. fo. 4. Dy.

So in the binding of a right by a deſcent, you are to conſider the whole time from the diſſeiſin to the deſcent caſt; and if at all times the perſon be not privileged, the deſcent binds.

9 H. 7. 24. 3 & 4 P. & M. Dr. 143.

And therefore if a feme covert be diſſeiſed, and the baron dieth, and ſhe taketh a new huſband, and then the deſcent is caſt: or if a man that is not *infra quatuor maria*, be diſſeiſed, and he return into England, and go over ſea again, and then a deſcent is caſt, this deſcent bindeth, becauſe of the *interim* when the perſons might have entered; and the law reſpecteth not the ſtate of the perſon at the laſt time of the deſcent caſt, but a continuance from the very diſſeiſin to the deſcent.

So if baron and feme be, and they join in a feoffment of the wife's land rendring a rent, and the baron die, and the feme taketh a new huſband before any rent-day, and he accepted the rent, the feoffment is affirmed for ever.

REGVLA II.

Non poteſt adduci exceptio ejuſdem rei, cujus petitur diſſolutio.

IT were impertinent and contrary in itſelf, for the law to allow of a plea in bar of ſuch matter as is to be defeated by the ſame ſuit; for it is included: otherwiſe a man ſhould never come to the end and effect of his ſuit, but be cut off in the way.

And therefore if tenant in tail of a manor, whereunto a villain is regardant, diſcontinue and die, and the right of the entail deſcend to the villain himſelf, who brings a *formedon*, and the diſcontinuee pleadeth villainage; this is no plea, becauſe the diveſting of the manor, which is the intention of the ſuit, doth include this plea, becauſe it determineth the villainage.

So if tenant in antient demeſne, be diſſeiſed by the lord, whereby the ſeigniory is ſuſpended, and the diſſeiſee bring his aſſize in the court of the lord, franck fee is no plea, becauſe the ſuit is brought to undo the diſſeiſin, and to revive the ſeigniory in ancient demeſne.

7 H. 4. 39.

7 H. 6. 44.

So if a man be attainted and executed, and the heir bring a writ of error upon the attainder, and the corruption of blood by the ſame attainder be pleaded, to interrupt his conveying in the ſame writ of error; this is no plea, for then he were without remedy ever to reverſe the attainder.

38 Ed. 3. 32.

So if tenant in tail diſcontinue for life rendring a rent, and the iſſue brings a *formedon*, and the warranty of his anceſtor with aſſets be pleaded againſt him, and the aſſets is laid to be no other but his reverſion with the rent; this is no plea,

plea, becauſe the *formedon* which is brought to undo this diſcontinuance, doth incluſively undo this new reverſion in fee, with the rent thereunto annexed.

But whether this rule may take place where the matter of the plea is not to be avoided in the ſame ſuit, but in another ſuit, is doubtful; and I rather take the law to be, that this rule doth extend to ſuch caſes; for otherwiſe the party were at a miſchief, in reſpect the exceptions and bars might be pleaded croſs, either of them, in the contrary ſuit; and ſo the party altogether prevented and intercepted to come by his right.

So if a man be attainted by two ſeveral attainders, and there is error in them both, there is no reaſon but that there ſhould be a remedy open for the heir to reverſe thoſe attainders being erroneous, as well if they be twenty as one.

And therefore, if in a writ of error brought by the heir of one of them, the attainder ſhould be a plea peremptory; and ſo again, if in error brought of that other, the former ſhould be a plea; theſe were to exclude him utterly of his right: and therefore it ſhould be a good replication to ſay, that he hath a writ of error depending of that alſo, and ſo the court ſhall proceed: but no judgment ſhall be given till both pleas be diſcuſſed; and if either plea be found without error, there ſhall be no reverſal either of the one or of the other; and if he diſcontinue either writ, then it ſhall be no longer a plea: and ſo of ſeveral outlawries in a perſonal action.

And this ſeemeth to me more reaſonable, than that generally an outlawry or an attainder ſhould be no plea in a writ of error brought upon a diverſe outlawry or an attainder, as 7 H. IV. and 7 H. VI. ſeem to hold; for that is a remedy too large for the miſchief; for there is no reaſon but if any of the outlawries or attainders be indeed without error, but it ſhould be a peremptory plea to the perſon in a writ of error, as well as in any other action.

But if a man levy a fine *ſur conuſaunce de droit come ceo que il ad de ſon done*, and ſuffer a recovery of the ſame lands, and there be error in them both, he cannot bring error firſt of the fine, becauſe by the recovery his title of error is diſcharged and releaſed in law *incluſivè*, but he muſt begin with the error upon the recovery (which he may do, becauſe a fine executed barreth no titles that accrue *de puiſne temps* after the fine levied) and ſo reſtore himſelf to his title of error upon the fine: but ſo it is not in the former caſe of the attainder; for a writ of error to a former attainder is not given away by a ſecond, except it be by expreſs words of an act of parliament, but only it remaineth a plea to his perſon while he liveth, and to the conveyance of his heir after his death.

But if a man levy a fine where he hath nothing in the land, which inureth by way of concluſion only, and is executory againſt all purchaſes and new titles which ſhall grow to the conuſor afterwards, and he purchaſe the land, and ſuffer a recovery to the conuſee, and in both fine and recovery there is error; this fine is *Janus bifrons*, and will look forward, and bar him of his writ of error brought of the recovery; and therefore it will come to the reaſon of the firſt caſe of the attainder, that he muſt reply, that he hath a writ alſo depending of the ſame fine, and ſo demand judgment.

To return to our firſt purpoſe, like law it is if tenant in tail of two acres make two ſeveral diſcontinuances to ſeveral perſons for life rendering a rent, and bringeth a *formedon* of both, and in the *formedon* brought of white acre the reverſion and rent reſerved upon black acre is pleaded, and ſo contrary. I take it to be a good replication, that he hath a *formedon* alſo upon that depending, whereunto the tenant hath pleaded the deſcent of the reverſion of white acre; and ſo neither ſhall be a bar: and yet there is no doubt but if in a *formedon* the warranty of tenant in tail with aſſets be pleaded, it is no replication for the iſſue to ſay, that a *praecipe* dependeth brought by I. S. to evict the aſſets.

But the former caſe ſtandeth upon the particular reaſon before mentioned.

REGVLA III.

Verba fortius accipiuntur contra proferentem.

THIS rule, that a man's deeds and his words ſhall be taken ſtrongliest againſt himſelf, though it be one of the moſt common grounds of the law, it is notwithſtanding a rule drawn out of the depth of reaſon; for, firſt, it is a ſchool-maſter of wiſdom and diligence in making men watchful in their own buſineſs; next it is author of much quiet and certainty, and that in two ſorts: firſt, becauſe it favoureth acts and conveyances executed, taking them ſtill beneficially for the grantees and poſſeſſors: and ſecondly, becauſe it makes an end of many queſtions and doubts about conſtruction of words; for if the labour were only to pick out the intention of the parties, every judge would have a ſeveral ſenſe; whereas this rule doth give them a ſway to take the law more certainly one way.

But this rule, as all others which are very general, is but a ſound in the air, and cometh in ſometimes to help and make up other reaſons without any great inſtruction or direction; except it be duly conceived in point of difference, where it taketh place, and where not. And firſt we will examine it in grants, and then in pleadings.

The force of this rule is in three things, in ambiguity of words, in implication of matter, and deducing or qualifying the expoſition of ſuch grants as were againſt the law, if they were taken according to their words.

2 R. 3. 18. 21 H. 7. 29. And therefore if I. S. ſubmit himſelf to arbitrement of all actions and ſuits between him and I. D. and I. N. it reſts ambiguous whether the ſubmiſſion ſhall be intended *collectivè* of joint actions only, or *diſtributivè* of ſeveral actions alſo; but becauſe the words ſhall be taken ſtrongliest againſt I. S. that ſpeaks them, it ſhall be underſtood of both: for if I. S. had ſubmitted himſelf to arbitrement of all actions and ſuits which he hath now depending, except it be ſuch as are between him and I. D. and I. N. now it ſhall be underſtood *collectivè* only of joint actions, becauſe in the other caſe large conſtruction was hardeſt againſt him that ſpeaks, and in this caſe ſtrict conſtruction is hardeſt.

8 Aſſ. p. 10. So if I grant ten pounds rent to baron and feme, and if the baron die that the feme ſhall have three pounds rent, becauſe theſe words reſt ambiguous whether I intend three pounds by way of increaſe, or three pounds by way of reſtraint and abatement of the former rent of ten pounds, it ſhall be taken ſtrongliest againſt me that am the grantor, that it is three pounds addition to the ten: but if I had let land to baron and feme for three lives, reſerving ten pounds *per annum*, and, if the baron die, reſerving three pounds; this ſhall be taken contrary to the former caſe, to abridge my rent only to three pounds.

14 H. 8. 28 H. 8. Dr. 19. So if I demiſe *omnes boſcos meos in villa de Dale* for years, this paſſeth the ſoil; but if I demiſe all my lands in Dale *exceptis boſcis*, this extendeth to the trees only, and not to the ſoil.

So if I ſow my lands with corn, and lett it for years, the corn paſſeth to my leſſee, if I except it not; but if I make a leaſe for life to I. S. upon condition that upon requeſt he ſhall make me a leaſe for years, and I. S. ſoweth his ground, and then I make requeſt, I. S. may well make me a leaſe excepting his corn, and not break the condition.

8 H. 7. 32 H. 6. So if I have free warren in mine own hand, and let my land for life, not mentioning the warren, yet the leſſee by implication ſhall have the warren diſcharged and extinct during his leaſe: but if I lett the land *una cum libera warrenna*, excepting white acre, there the warren is not by implication reſerved unto me either to be enjoyed or extinguiſhed; but the leſſee ſhall have warren againſt me in white acre.

29 Aſſ. pl. 10. So if I. S. hold of me by fealty and rent only, and I grant the rent, not ſpeaking of the fealty; yet the fealty by implication ſhall paſs, becauſe my grant ſhall be taken ſtrongly as of a rent ſervice, and not of a rent ſecke.

44 Ed. 3. 19. 26 Aſſ. pl. 66. Otherwiſe had it been if the ſeigniory had been by homage, fealty, and rent, becauſe of the dignity of the ſervice, which could not have paſſed by intendment by the grant of the rent: but if I be ſeiſed of the manor of Dale in fee,

whereof

whereof I. S. holds by fealty and rent, and I grant the manor excepting the rent, the fealty ſhall paſs to the grantee, and I ſhall have but a rent ſecke.

So in grants againſt the law, if I give land to I. S. and his heirs males, this is a good fee-ſimple, which is a larger eſtate than the words ſeem to intend, and the word "males" is void. But if I make a gift in tail, reſerving a rent to me and the heirs of my body, the words "of my body" are not void, and ſo leave it a rent in fee-ſimple; but the word "heirs" and all are void, and leaves it but a rent for life; except that you will ſay, it is but a limitation to any my heir in fee-ſimple which ſhall be heir of my body; for it cannot be a rent in tail by reſervation.

But if I give land with my daughter in frank marriage, the remainder to I. S. and his heirs, this grant cannot be good in all the parts, according to the words: for it is incident to the nature of a gift in frank marriage, that the donee hold it of the donor; and therefore my deed ſhall be taken ſo ſtrongly againſt myſelf, * that rather than the remainder ſhall be void, the frank marriage, though it be firſt placed in the deed, ſhall be void as a frank marriage.

But if I give land in frank marriage, reſerving to me and my heirs ten pounds rent, now the frank marriage ſtands good, and the reſervation is void, becauſe it is a limitation of a benefit to myſelf, and not to a ſtranger.

So if I lett white acre, black acre, and green acre to I. S. excepting white acre, this exception is void, becauſe it is repugnant; but if I lett the three acres aforeſaid, rendring twenty ſhillings rent, *viz.* for white acre ten ſhillings, and for black acre ten ſhillings, I ſhall not diſtrain at all in green acre, but that ſhall be diſcharged of my rent. 4 H. 6. 22. 26 Aſſ. pl. 66.

So if I grant a rent to I. S. and his heirs out of my manor of Dale, *et obligo manerium, et omnia bona et catalla mea ſuper manerium praedictum exiſtentia, ad diſtringendum per ballivum domini regis:* this limitation of the diſtreſs to the king's bailiff is void, and it is good to give a power of diſtreſs to I. S. the grantee, and his bailiffs. 46 Ed. 3. 18.

But if I give land in tail *tenend' de capitalibus dominis per redditum viginti ſolidorum et fidelitatem:* this limitation of tenure to the lord is void; and it ſhall not be good, as in the other caſe, to make a reſervation of twenty ſhillings good unto myſelf; but it ſhall be utterly void, as if no reſervation at all had been made: and if the truth be that I, that am the donor, hold of the lord paramount by ten ſhillings only, then there ſhall be ten ſhillings only reſerved upon the gift in tail as for owelty. 2 Ed. 4, 5.

So if I give land to I. S. and the heirs of his body, and for default of ſuch iſſue *quod tenementum praedictum revertatur ad I. N.* yet theſe words of reſervation will carry a remainder to a ſtranger. But if I lett white acre to I. S. excepting ten ſhillings rent, theſe words of exception to mine own benefit ſhall never inure to words of reſervation. 21 Ed. 3. 49. 31 et 32 H. 8. Dyer 46. Plow. fo. 37. 35 H. 6. 34.

But now it is to be noted, that this rule is the laſt to be reſorted to, and is never to be relied upon but where all other rules of expoſition of words fail; and if any other come in place, this giveth place. And that is a point worthy to be obſerved generally in the rules of the law, that when they encounter and croſs one another in any caſe, it be underſtood which the law holdeth worthier, and to be preferred; and it is in this particular very notable to conſider, that this being a rule of ſome ſtrictneſs and rigor, doth not, as it were, its office, but in abſence of other rules which are of more equity and humanity; which rules you ſhall afterwards find ſet down with their expoſitions and limitations.

But now to give a taſte of them to this preſent purpoſe: it is a rule, that general words ſhall never be ſtretched too far in intendment, which the civilians utter thus; *Verba generalia reſtringuntur ad habilitatem perſonae, vel ad aptitudinem rei.*

Therefore if a man grant to another, common *intra metas et bundas villae de Dale*, and part of the ville is his ſeveral, and part his waſte and common; the 14 Aſſ. pl. 25.

* Quaere car le ley ſemble dée le contrary, entant que in un grant quant lun part del fait ne poit eſtoier ove lauter le darr: ſerra void, auterment in un deviſe & accordant fuit lopin: de Sur Anderſon et Owen Juſt. contra Walmeſley Juſt. P. 40. Eliz. in le caſe de Counteſſe de Warwick et Sur Barkley in com. banco.

grantee

grantee ſhall not have common in the ſeveral: and yet this is the ſtrongeſt expoſition againſt the grantor.

Lit. cap. cond. So it is a rule, *Verba ita ſunt intelligenda, ut res magis valeat, quam pereat*; and therefore if I give land to I. S. and his heirs, *reddend. quinque libras annuatim* to I. D. and his heirs, this implies a condition to me that am the grantor; yet it were a ſtronger expoſition againſt me, to ſay the limitation ſhould be void, and the feoffment abſolute.

10 Ed. 4. 1. So it is a rule, that the law will not intend a wrong, which the civilians utter thus; *Ea eſt accipienda interpretatio, quae vitio caret.* And therefore if the executors of I. S. grant *omnia bona et catalla ſua*, the goods which they have as executors, will not paſs, becauſe *non conſtat* whether it may not be a devaſtation, and ſo a wrong; and yet againſt the treſpaſſer that taketh them out of their hand, they ſhall declare *quod bona ſua cepit.*

So it is a rule, that words are ſo to be underſtood that they work ſomewhat, and be not idle and frivolous: *Verba aliquid operari debent, verba cum effectu ſunt accipienda.* And therefore if I bargain and ſell you four parts of my manor of Dale, and ſay not in how many parts to be divided, this ſhall be conſtrued four parts of five, and not of ſix nor ſeven, etc. becauſe that it is the ſtrongeſt againſt me; but on the other ſide, it ſhall not be intended four parts of four parts, or the whole of four quarters; and yet that were ſtrongeſt of all, but then the words were idle and of none effect.

3 H. 6. 2c. So it is a rule, *Divinatio non interpretatio eſt, quae omnino recedit a litera:* and therefore if I have a fee farm-rent iſſuing out of white acre of ten ſhillings, and I reciting the ſame reſervation do grant to I. S. the rent of five ſhillings *percipiend' de reddit' praedict' et de omnibus terris et tenementis meis in Dale*, with a clauſe of diſtreſs, although there be atturnement, yet nothing paſſeth out of my former rent; and yet that were ſtrongeſt againſt me to have it a double rent, or grant of part of that rent with an enlargement of a diſtreſs in the other land, but for that it is againſt the words, becauſe *copulatio verborum indicat acceptionem in eodem ſenſu*, and the word *de* (*anglice* out of) may be taken in two ſenſes, that is, either as a greater ſum out of a leſs, or as a charge out of land, or other principal intereſt; and that the coupling of it with lands and tenements, *viz.* I reciting that I am ſeiſed of ſuch a rent of ten ſhillings, do grant five ſhillings *percipiend' de eodem reddit'*, it is good enough without atturnment; becauſe *percipiend' de etc.* may well be taken for *parcella de etc.* without violence to the words; but if it had been *de reddit' predict'*, although I. S. be the perſon that payeth me the foreſaid rent of ten ſhillings, yet it is void: and ſo it is of all other rules of expoſition of grants, when they meet in oppoſition with this rule they are preferred.

Now to examine this rule in pleadings as we have done in grants, you ſhall find that in all imperfections of pleadings, whether it be in ambiguity of words and double intendments, or want of certainty and averments, the plea ſhall be ſtrictly and ſtrongly againſt him that pleads.

For ambiguity of words, if in a writ of entry upon diſſeiſin, the tenant pleads jointenancy with I. S. of the gift and feoffment of I. D. judgment de briefe, the demandant ſaith that long time before I. D. any thing had, the demandant himſelf was ſeiſed in fee *quouſque praedict' I. D. ſuper poſſeſſionem ejus intravit*, and made a joint feoffment, whereupon he the demandant re-entred, and ſo was ſeiſed until by the defendant alone he was diſſeiſed; this is no plea, becauſe the word *intravit* may be underſtood either of a lawful entry, or of a tortious; and the hardeſt againſt him ſhall be taken, which is, that it was a lawful entry; therefore he ſhould have alledged preciſely that I. D. *diſſeiſivit.*

3 E. 6. Dy. 66. So upon ambiguities that grow by reference, if an action of debt be brought againſt I. N. and I. P. ſheriffs of London, upon an eſcape, and the plaintiff doth declare upon an execution by force of a recovery in the priſon of Ludgate *ſub cuſtodia* I. S. *et* I. D. then ſheriffs in 1 K. H. VIII. and that he ſo continued *ſub cuſtodia I. B. et I. G.* in 2 K. H. VIII. and ſo continued *ſub cuſtodia I. N. et I. L.* in 3 K. H. VIII. and then was ſuffered to eſcape: I. N. and I. L. plead, that before the eſcape, ſuppoſed at ſuch a day *anno ſuperius in narratione*

tione ſpecificato, the ſaid I. D. and I. S. *ad tunc vicecomites* ſuffered him to eſcape; this is no good plea, becauſe there be three years ſpecified in the declaration, and it ſhall be hardeſt taken that it was 1 or 3 H. VIII. when they were out of office; and yet it is nearly induced by the *ad tunc vicecomites*, which ſhould leave the intendment to be of that year in which the declaration ſuppoſeth that they were ſheriffs; but that ſufficeth not, but the year muſt be alledged in fact, for it may be miſlaid by the plaintiff, and therefore the defendants meaning to diſcharge themſelves by a former eſcape, which was not in their time, muſt alledge it preciſely.

For incertainty of intendment, if a warranty collateral be pleaded in bar, and the plaintiff by replication, to avoid the warranty, ſaith, that he entred upon the poſſeſſion of the defendant, *non conſtat* whether this entry was in the life of the anceſtor, or after the warranty attached; and therefore it ſhall be taken in the hardeſt ſenſe, that it was after the warranty deſcended, if it be not otherwiſe averred. 26 H. 8.

For impropriety of words, if a man plead that his anceſtor died by proteſtation ſeiſed, and that I. S. abated, *etc.* this is no plea, for there cannot be an abatement except there be a dying ſeiſed alledged in fact; and an abatement ſhall not be improperly taken for diſſeiſin in pleading, *car parols font pleas*. 38 H. 6. 18. 39 H. 6. 5.

For repugnancy, if a man in avowry declare that he was ſeiſed in his demeſne as of fee of white acre, and being ſo ſeiſed did demiſe the ſaid white acre to I. S. *habendum*, the moiety for twenty-one years from the date of the deed, the other moiety from the ſurrender, expiration, or determination of the eſtate of I. D. *qui tenet praedict' medietatem ad terminum vitae ſuae reddend'* 40 s. rent: this declaration is inſufficient, becauſe the ſeiſin that he hath alledged in himſelf in his demeſne as of fee in the whole, and the ſtate for life of a moiety, are repugnant; and it ſhall not be cured by taking the laſt which is expreſſed to controll the former, which is but general and formal; but the plea is naught, and yet the matter in law had been good to have intitled him to have diſtrained for the whole rent.

But the ſame reſtraint follows this rule in pleading that was before noted in grants: for if the caſe be ſuch as falleth within another rule of pleading, this rule may not be urged.

And therefore it is a rule that a bar is good to a common intent, though not to every intent. As if a debt be brought againſt five executors, and three of them make default, and two appear and plead in bar a recovery had againſt them two of 300 *l.* and nothing in their hands over and above that ſum: if this bar ſhould be taken ſtrongſieſt againſt them, it ſhould be intended that they might have abated the firſt ſuit, becauſe the other three were not named, and ſo the recovery not duly had againſt them; but becauſe of this other rule the bar is good: for that the more common intent will ſay, that they two only did adminiſter, and ſo the action well conſidered; rather than to imagine, that they would have loſt the benefit and advantage of abating the writ. 9 Ed. 4. 4 Ed. 6 Plow.

So there is another rule, that in pleading a man ſhall not diſcloſe that which is againſt himſelf: and therefore if it be matter that is to be ſet forth on the other ſide, then the plea ſhall not be taken in the hardeſt ſenſe, but in the moſt beneficial, and to be left unto the contrary party to alledge.

And therefore if a man be bound in an obligation, that if the feme of the obligee do deceaſe before the feaſt of St. John the Baptiſt which ſhall be in the year of our Lord 1598, without iſſue of her body by her huſband lawfully begotten then living, that then the bond ſhall be void; and in debt brought upon this obligation the defendants plead that the feme died before the ſaid feaſt without iſſue of her body then living: if this plea ſhould be taken ſtrongſieſt againſt the defendant, then ſhould it be taken that the feme had iſſue at the time of her death, but this iſſue died before the feaſt; but that ſhall not be ſo underſtood, becauſe it makes againſt the defendant, and it is to be brought in of the plaintiff's ſide, and that without traverſe. 28 H. 8. Dy. fol. 17.

So if in a detinue brought by a feme againſt the executors of her huſband for her reaſonable part of the goods of her huſband, and her demand is of a moiety,

and ſhe declares upon the cuſtom of the realm, by which the feme is to have a moiety, if no iſſue be had between her and her huſband, and the third part if there be iſſue had, and declareth that her huſband died without iſſue had between them; if this count ſhould be hardlieſt conſtrued againſt the party, it ſhould be intended that her huſband had iſſue by another wife, though not by her, in which caſe the feme is but to have the third part likewiſe; but that ſhall not be ſo intended, becauſe it is matter of reply to be ſhewed of the other ſide.

And ſo it is of all other rules of pleadings, theſe being ſufficient not only for the exact expounding of theſe other rules, but *obiter* to ſhew how this rule which we handle is put by when it meets with any other rule.

As for acts of parliament, verdicts, judgments, *etc.* which are not words of parties, in them this rule hath no place at all, neither in deviſes and wills, upon ſeveral reaſons; but more eſpecially it is to be noted, that in evidence it hath no place, which yet ſeems to have ſome affinity with pleadings, eſpecially when demurrer is joined upon the evidence.

And therefore if land be given by will by H. C. to his ſon I. C. and the heirs males of his body begotten; the remainder to F. C. and the heirs males of his body begotten; the remainder to the heirs males of the body of the deviſor; the remainder to his daughter S. C. and the heirs of her body, with a clauſe of perpetuity; and the queſtion comes upon the point of forfeiture in an aſſize taken by default, and evidence is given, and demurrer upon evidence, and in the evidence given to maintain the entry of the daughter upon a forfeiture, it is not ſet forth nor averred that the deviſor had no other iſſue male, yet the evidence is good enough, and it ſhall be ſo intended; and the reaſon hereof cannot be, becauſe a jury may take knowledge of matters not within the evidence; and the court contrariwiſe cannot take knowledge of any matters not within the pleas: for it is clear that if the evidence had been altogether remote, and not proving the iſſue there, although the jury might find it, yet a demurrer might well be taken upon the evidence.

But I take the reaſon of difference between pleadings, which are but openings of the caſe, and evidences which are the proofs of an iſſue, to be, that pleadings being but to open the verity of the matter in fact indifferently on both parts, have no ſcope and concluſion to direct the conſtruction and intendment of them, and therefore muſt be certain; but in evidence and proofs the iſſue, which is the ſtate of the queſtion and concluſion, ſhall incline and apply all the proofs as tending to that concluſion.

Another reaſon is, that pleadings muſt be certain, becauſe the adverſe party may know whereto to anſwer, or elſe he were at a miſchief, which miſchief is remedied by a demurrer; but in evidence if it be ſhort, impertinent, or incertain, the adverſe party is at no miſchief, becauſe it is to be thought that the jury will paſs againſt him; yet nevertheleſs the jury is not compellable to ſupply the defect of evidence out of their own knowledge, though it be in their liberty ſo to do; therefore the law alloweth a demurrer upon evidence alſo.

REGVLA IV.

Quod ſub certa forma conceſſum vel reſervatum eſt, non trahitur ad valorem vel compenſationem.

THE law permitteth every man to part with his own intereſt, and to qualify his own grant, as it pleaſeth himſelf; and therefore doth not admit any allowance or recompence if the thing be not taken as it is granted.

17 H. 6. 10. So in all profits *a prender*, if I grant common for ten beaſts, or ten loads of wood out of my coppice, or ten loads of hay out of my meads, to be taken for three years; he ſhall not have common for thirty beaſts, or thirty loads of wood or hay, the third year, if he forbear for the ſpace of two years: here the time is certain and preciſe.

So if the place be limited, or if I grant eſtovers to be ſpent in ſuch a houſe, or ſtone towards the reparation of ſuch a caſtle; although the grantee do burn

of

of his fuel and repair of his own charge, yet he can demand no allowance for that he took it not.

So if the kind be ſpecified, as if I lett my park reſerving to myſelf all the deer and ſufficient paſture for them, if I do decay the game whereby there is no deer, I ſhall not have quantity of paſture anſwerable to the feed of ſo many deer as were upon the ground when I lett it; but am without any remedy except I repleniſh the ground again with deer.

But it may be thought that the reaſon of theſe caſes is the default and lacheſs of the grantee, which is not ſo.

For put the caſe that the houſe where the eſtovers ſhould be ſpent be overthrown by the act of God, as by tempeſt, or burnt by the enemies of the King, yet there is no recompence to be made.

And in the ſtrongeſt caſe where it is in default of the grantor, yet he ſhall make void his own grant rather than the certain form of it ſhould be wreſted to an equity or valuation.

As if I grant common *ubicunque averia mea ierint*, the commoner cannot otherwiſe entitle himſelf, except that he aver that in ſuch grounds my beaſts have gone and fed; and if I never put in any, but occupy my grounds otherwiſe, he is without remedy; but if I put in, and after by poverty or otherwiſe I deſiſt, yet the commoner may continue; contrariwiſe, if the words of the grant had been *quandocunque averia mea ierint*, for there it depends continually upon the putting in of my beaſts, or at leaſt the general ſeaſons when I put them in, not upon every hour or moment.

But if I grant *tertiam advocationem* to I. S. if he neglect to take his turn *ea vice*, he is without remedy: but if my wife be before intitled to dower, and I die, then my heir ſhall have two preſentments, and my wife the third, and my grantee ſhall have the fourth; and it doth not impugn this rule at all, becauſe the grant ſhall receive that conſtruction at the firſt that it was intended ſuch an avoidance as may be taken and enjoyed; as if I grant *proximam advocationem* to I. D. and then grant *proximam advocationem* to I. S. this ſhall be intended the next to the next, which I may lawfully grant or diſpoſe. *Quaere* 29 H. 8. Dy. 38.

But if I grant *proximam advocationem* to I. S. and I. N. is incumbent, and I grant by preciſe words, *illam advocationem, quam poſt mortem, reſignationem, tranſlationem, vel deprivationem I. N. immediate fore contigerit*; now the grant is merely void, becauſe I had granted that before, and it cannot be taken againſt the words.

REGVLA V.

Neceſſitas inducit privilegium quoad jura privata.

THE law chargeth no man with default where the act is compulſory and not voluntary, and where there is not a conſent and election; and therefore if either there be an impoſſibility for a man to do otherwiſe, or ſo great a perturbation of the judgment and reaſon as in preſumption of law man's nature cannot overcome, ſuch neceſſity carrieth a privilege in itſelf. 4 Ed. 6. Pl. com. Staundf.

Neceſſity is of three ſorts, neceſſity of conſervation of life, neceſſity of obedience, and neceſſity of the act of God, or of a ſtranger.

Firſt, of conſervation of life: if a man ſteal viands to ſatisfy his preſent hunger, this is no felony nor larceny. Staundf.

So if divers be in danger of drowning by the caſting away of ſome boat or barge, and one of them get to ſome plank, or on the boat's ſide to keep himſelf above water, and another to ſave his life thruſt him from it, whereby he is drowned; this is neither *ſe defendendo* nor by miſadventure, but juſtifiable.

So if divers felons be in a goal, and the goal by caſualty is ſet on fire, whereby the priſoners get forth; this is no eſcape, nor breaking of priſon. Cond. 13. 6. per Brooke,

So upon the ſtatute, that every merchant that ſetteth his merchandize on land without ſatisfying the cuſtomer or agreeing for it (which agreement is conſtrued to be in certainty) ſhall forfeit his merchandize, and if it is ſo that by tempeſt a great quantity of the merchandize is caſt over-board, whereby the merchant 15 H. 7. 2. per Keeble. 14 H. 7. 29. per Read. 4 Ed. 6. vid. Pl. com. 4. to 20.

merchant agrees with the cuſtomer by eſtimation, which falleth out ſhort of the truth, yet the over-quantity is not forfeited; where note that neceſſity diſpenſeth with the direct letter of a ſtatute law.

Lit ſect. 419. 12 H. 4. 20. 14 H. 4. 30. B. 38 H. 6. 11. 28 H. 6. 8. 39 H. 6. 50. Staundf. 26. 2 Ed. 3. Fitzh. Cor. 160.

So if a man have right to land, and do not make his entry for terror of force, the law allows him a continual claim, which ſhall be as beneficial unto him as any entry; ſo ſhall a man ſave his default of appearance by *cretain de eau*, and avoid his debt by *dureſſe*, whereof you ſhall find proper caſes elſewhere.

The ſecond neceſſity is of obedience; and therefore where baron and feme commit a felony, the feme can neither be principal nor acceſſary; becauſe the law intends her to have no will, in regard of the ſubjection and obedience ſhe owes to her huſband.

So one reaſon among others why ambaſſadors are uſed to be excuſed of practices againſt the ſtate where they reſide, except it be in point of conſpiracy, which is againſt the law of nations and ſociety, is, becauſe *non conſtat* whether they have it *in mandatis*, and then they are excuſed by neceſſity of obedience.

So if a warrant or precept come from the king to fell wood upon the ground whereof I am tenant for life or for years, I am excuſed in waſte.

B. Waſt. 31. 43 Ed. 3. 6 19 Ed. 3. per Th. Fitz. Waſt. 30. 32 Ed 3. Fitz. Waſt. 105. 44 Ed. 3. 31.

The third neceſſity is of the act of God, or of a ſtranger, as if I be particular tenant for years of a houſe, and it be overthrown by grand tempeſt, or thunder and lightning, or by ſudden floods, or by invaſion of enemies, or if I have belonging unto it ſome cottage which hath been infected, whereby I can procure none to inhabit them, no workmen to repair them, and ſo they fall down; in all theſe caſes I am excuſed in waſte: but of this laſt learning when and how the act of God and ſtrangers do excuſe, there be other particular rules.

But then it is to be noted, that neceſſity privilegeth only *quoad jura privata*, for in all caſes if the act that ſhould deliver a man out of the neceſſity be againſt the commonwealth, neceſſity excuſeth not; for *privilegium non valet contra rempublicam:* and as another ſaith, *neceſſitas publica major eſt quam privata:* for death is the laſt and fartheſt point of particular neceſſity, and the law impoſeth it upon every ſubject, that he prefer the urgent ſervice of his prince and country before the ſafety of his life: as if in danger of tempeſt thoſe that are in the ſhip throw over other mens goods, they are not anſwerable; but if a man be commanded to bring ordnance or munition to relieve any of the king's towns that are diſtreſſed, then he cannot for any danger of tempeſt juſtify the throwing of them overboard; for there it holdeth which was ſpoken by the Roman, when he alledged the ſame neceſſity of weather to hold him from embarking, *Neceſſe eſt ut eam, non ut vivam.* So in the caſe put before of huſband and wife, if ſhe join in committing treaſon, the neceſſity of obedience doth not excuſe the offence, as it doth in felony, becauſe it is againſt the commonwealth.

13 H. 8. 16. per Shelly. 12 H 8. 10. per Brooke. 22 Aſſ. pl. 56.

So if a fire be taken in a ſtreet, I may juſtify the pulling down of the wall or houſe of another man, to ſave the row from the ſpreading of the fire; but if I be aſſailed in my houſe in a city or town and diſtreſſed, and to ſave my life I ſet fire on mine own houſe, which ſpreadeth and taketh hold upon other houſes adjoining, this is not juſtifiable, but I am ſubject to their action upon the caſe, becauſe I cannot reſcue mine own life by doing any thing which is againſt the commonwealth: but if it had been but a private treſpaſs, as the going over another's ground, or the breaking of his incloſure when I am purſued, for the ſafeguard of my life, it is juſtifiable.

6 Ed. 4. 7. per Sareſ.

4 H. 7. 2.

This rule admitteth an exception when the law doth intend ſome fault or wrong in the party that hath brought himſelf into the neceſſity; ſo that is *neceſſitas culpabilis*. This I take to be the chief reaſon why *ſeipſum defendendo* is not matter of juſtification, becauſe the law intends it hath a commencement upon an unlawful cauſe, becauſe quarrels are not preſumed to grow without ſome wrongs either in words or deeds on either part, and the law that thinketh it a thing hardly triable in whoſe default the quarrel began, ſuppoſeth the party that kills another in his own defence not to be without malice; and therefore as it doth not touch him in the higheſt degree, ſo it putteth him to ſue out his pardon of courſe, and puniſheth him by forfeiture of goods: for where there cannot

cannot be any malice nor wrong presumed, as where a man assails me to rob me, and I kill him that assaileth me; or if a woman kill him that assaileth her to ravish her, it is justifiable without any pardon.

So the common case proveth this exception, that is, if a madman commit a felony, he shall not lose his life for it, because his infirmity came by the act of God: but if a drunken man commit a felony, he shall not be excused, because his imperfection came by his own default; for the reason and loss of deprivation of will and election by necessity and by infirmity is all one, for the lack of *arbitrium solutum* is the matter: and therefore as *infirmitas culpabilis* excuseth not, no more doth *necessitas culpabilis*. 21 H. 7. 13.

REGVLA VI.

Corporalis injuria non recipit aestimationem de futuro.

THE law, in many cases that concern lands or goods, doth deprive a man of his present remedy, and turneth him over to a further circuit of remedy, rather than to suffer an inconvenience: but if it be question of personal pain, the law will not compel him to sustain it and expect remedy, because it holdeth no damage a sufficient recompence for a wrong which is corporal.

As if the sheriff make a false return that I am summoned, whereby I lose my land; yet because of the inconvenience of drawing all things to incertainty and delay, if the sheriff's return should not be credited, I am excluded of my averment against it, and am put to mine action of deceit against the sheriff and summoners: but if the sheriff upon a *capias*, return a *cepi corpus, et quod est languidus in prisona*, there I may come in and falsify the return of the sheriff to save my imprisonment. 5. Ed. 4. 80. 3 H. 6. 3.

So if a man menace me in my goods, and that he will burn certain evidences of my land which he hath in his hand, if I will not make unto him a bond, yet if I enter into bond by this terror, I cannot avoid it by plea, because the law holdeth it an inconvenience to avoid a specialty by such matter of averment; and therefore I am put to mine action against such a menacer: but if he restrain my person, or threaten me with a battery, or with the burning of my house, which is a safety and protection to my person, or with burning an instrument of manumission, which is an evidence of my enfranchisement; if upon such menace or duresse I make a deed, I shall avoid it by plea. 7 Ed. 4. 21.

So if a trespasser drive away my beasts over another's ground, and I pursue them to rescue them, yet am I trespasser to the stranger upon whose ground I came: but if a man assail my person, and I fly over another's ground, now am I no trespasser. 13 H. 8. 15. 21 H. 7. 28.

This ground some of the canonists do aptly infer out of Christ's sacred mouth, *Amen, est corpus supra vestimentum*, where they say *vestimentum* comprehendeth all outward things appertaining to a man's condition, as lands and goods, which, they say, are not in the same degree with that which is corporal; and this was the reason of the antient *lex talionis, oculus pro oculo, dens pro dente*, so that by that law *corporalis injuria de praeterito non recipit aestimationem*: but our law, when the injury is already executed and inflicted, thinketh it best satisfaction to the party grieved to relieve him in damage, and to give him rather profit than revenge; but it will never force a man to tolerate a corporal hurt, and to depend upon that inferior kind of satisfaction, *ut in dammagiis*.

REGVLA VII.

Excusat aut extenuat delictum in capitalibus, quod non operatur idem in civilibus.

IN capital causes *in favorem vitae*, the law will not punish in so high a degree, except the malice of the will and intention appear; but in civil trespasses and injuries that are of an inferior nature, the law doth rather consider the damage

of the party wronged, than the malice of him that was the wrong doer: and therefore

The law makes a difference between killing a man upon malice fore-thought, and upon preſent heat: but if I give a man ſlanderous words, whereby I damnify him in his name and credit, it is not material whether I uſe them upon ſudden choler and provocation, or of ſet malice, but in an action upon the caſe I ſhall render damages alike.

So if a man be killed by miſadventure, as by an arrow at buts, this hath a pardon of courſe: but if a man be hurt or maimed only, an action of treſpaſs lieth, though it be done againſt the party's mind and will, and he ſhall be puniſhed in the law as deeply as if he had done it of malice.

Staundf. 16. 6 Ed. 4. 7.

Standf. 16. So if a ſurgeon authorized to practiſe, do through negligence in his cure cauſe the party to die, the ſurgeon ſhall not be brought in queſtion of his life; and yet if he do only hurt the wound, whereby the cure is caſt back, and death enſues not, he is ſubject to an action upon the caſe for his misfaiſance.

So if baron and feme be, and they commit felony together, the feme is neither principal nor acceſſary, in regard of her obedience to the will of her huſband: but if baron and feme join in committing a treſpaſs upon land or otherwiſe, the action may be brought againſt them both.

So if an infant within years of diſcretion, or a madman, kill another, he ſhall not be impeached thereof; but if they put out a man's eye, or do him like corporal hurt, he ſhall be puniſhed in treſpaſs.

35 H. 6. 11. So in felonies the law admitteth the difference of principal and acceſſary, and if the principal die, or be pardoned, the proceeding againſt the acceſſary faileth; but in a treſpaſs, if one command his man to beat you, and the ſervant after the battery die, yet your action of treſpaſs ſtands good againſt the maſter.

17 H. 4. 19.

REGVLA VIII.

Aeſtimatio praeteriti delicti ex poſtremo facto nunquam creſcit.

THE law conſtrueth neither penal laws nor penal facts by intendments, but conſidereth the offence in degree, as it ſtandeth at the time when it is committed; ſo as if any circumſtance or matter be ſubſequent, which laid together with the beginning ſhould ſeem to draw it to a higher nature, yet the law doth not extend or amplify the offence.

11 H. 4. 12. Therefore if a man be wounded, and the percuſſor is voluntarily let go at large by the gaoler, and after, death enſueth of the hurt, yet this is no felonious eſcape in the gaoler.

So if the villain ſtrike the heir apparent of the lord, and the lord dieth before, and the perſon hurt who ſucceedeth to be lord to the villain dieth after, yet this is no petty treaſon.

So if a man compaſs and imagine the death of one that after cometh to be King of the land, not being any perſon mentioned within the ſtatute of 25 Ed. III. this imagination precedent is not high treaſon.

So if a man uſe ſlanderous words of a perſon upon whom ſome dignity after deſcends that maketh him a peer of the realm, yet he ſhall have but a ſimple action of the caſe, and not in the nature of a *ſcandalum magnatum* upon the ſtatute.

So if John Stile ſteal ſix pence from me in money, and the King by his proclamation doth raiſe monies, that the weight of ſilver in the piece now of ſix pence ſhould go for twelve pence, yet this ſhall remain petty larceny and no felony: and yet in all civil reckonings the alteration ſhall take place; as if I contract with a labourer to do ſome work for twelve pence, and the inhancing of money cometh before I pay him, I ſhall ſatisfy my contract with a ſix penny piece ſo raiſed.

So if a man deliver goods to one to keep, and after retain the ſame perſon into his ſervice, who afterwards goeth away with his goods, this is no felony by the ſtatute of 21 H. VIII. becauſe he was no ſervant at that time.

28 H. 8. pl. 2.

In

In like manner, if I deliver goods to the ſervant of I. S. to keep, and after die, and make I. S. my executor; and before any new commandment of I. S. to his ſervant for the cuſtody of the ſame goods, his ſervant goeth away with them, this is alſo out of the ſtatute. *Quod nota.*

But note that it is ſaid *praeteriti delicti*; for any acceſſary before the fact is ſubject to all the contingencies pregnant of the fact, if they be purſuances of the ſame fact: as if a man command or counſel one to rob a man, or beat him grievouſly, and murder enſue, in either caſe he is acceſſary to the murder, *quia in criminalibus praeſtantur accidentia.* 18 Eliz. 175.

REGVLA IX.

Quod remedio deſtituitur ipſa re valet ſi culpa abſit.

THE benignity of the law is ſuch, as, when to preſerve the principles and grounds of law it depriveth a man of his remedy without his own fault, it will rather put him in a better degree and condition than in a worſe; for if it diſable him to purſue his action, or to make his claim, ſometimes it will give him the thing itſelf by operation of law without any act of his own, ſometimes it will give him a more beneficial remedy.

And therefore if the heir of the diſſeiſor which is in by deſcent make a leaſe for life, the remainder for life unto the diſſeiſee, and the leſſee for life die, now the frank tenement is caſt upon the diſſeiſee by act in law, and thereby he is diſabled to bring his *praecipe* to recover his right; whereupon the law judgeth him in his antient right as ſtrongly as if it had been recovered and executed by action, which operation of law is by an antient term and word of law called a *remitter*; but if there may be aſſigned any default or laches in him, either in accepting the freehold, or in accepting the intereſt that draws the freehold, then the law denieth him any ſuch benefit. Lit. ſect. 683.

And therefore if the heir of the diſſeiſor make a leaſe for years, the remainder in fee to the diſſeiſee, the diſſeiſee is not remitted, and yet the remainder is in him without his own knowledge or aſſent; but becauſe the freehold is not caſt upon him by act in law, it is no remitter. *Quod nota.*

So if the heir of the diſſeiſor infeoff the diſſeiſee and a ſtranger, and make him livery, although the ſtranger die before any agreement or taking of the profits by the diſſeiſee, yet he is not remitted; becauſe though a moiety be caſt upon him by ſurvivor, yet that is but *jus accreſcendi*, and it is no caſting of the freehold upon him by act in law, but he is ſtill as an immediate purchaſer, and therefore no remitter. Lit.

So if the huſband be ſeiſed in the right of his wife, and diſcontinue and die, and the feme takes another huſband, who takes a feoffment from the diſcontinuee to him and his wife, the feme is not remitted; and the reaſon is, becauſe ſhe was once ſole, and ſo a laches in her for not purſuing her right: but if the feoffment taken back had been to the firſt huſband and herſelf, ſhe had been remitted. Lit ſect. 666.

Yet if the huſband diſcontinue the lands of the wife, and the diſcontinuee make a feoffment to the uſe of the huſband and wife, ſhe is not remitted; but that is upon a ſpecial reaſon, upon the letter of the ſtatute of 27 H. VIII. of uſes, that willeth that the *ceſtuy que uſe* ſhall have the poſſeſſion in quality and degree as he had the uſe; but that holdeth place only upon the firſt veſting of the uſe: for when the uſe is abſolutely executed and veſted, then it doth inſue merely the nature of poſſeſſions; as if the diſcontinuee had made a feoffment in fee to the uſe of I. S. for life, the remainder to the uſe of baron and feme, and leſſee for life die, now the feme is remitted, *cauſa qua ſupra.*

Alſo if the heir of the diſſeiſor make a leaſe for life, the remainder to the diſſeiſee, who chargeth the remainder, and the leſſee for life dies, the diſſeiſee is not remitted; and the reaſon is, his intermeddling with the wrongful remainder, whereby he hath affirmed the ſame to be in him, and ſo accepted it: but if the heir of the diſſeiſor had granted a rent charge to the diſſeiſee, and afterwards made a leaſe for life, the remainder to the diſſeiſee, and the leſſee

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for life had died, the diſſeiſee had been remitted; becauſe there appeareth no aſſent or acceptance of any eſtate in the freehold, but only of a collateral charge.

So if the feme be diſſeiſed, and intermarry with the diſſeiſor, who makes a leaſe for life, rendring rent, and dieth leaving a ſon by the ſame feme, and the ſon accepts the rent of the leſſee for life, and then the feme dies, and the leſſee for life dies, the ſon is not remitted; yet the franktenement was caſt upon him by act in law, but becauſe he had agreed to be in the tortious reverſion by acceptance of the rent, therefore no remitter.

6 Ed. 3. 17.

28 H. 8. pl. 207.

So if tenant in tail diſcontinue, and the diſcontinuee make a leaſe for life, the remainder to the iſſue in tail being within age, and at full age the leſſee for life ſurrendereth to the iſſue in tail, and tenant in tail dies, and leſſee for life dies, yet the ſame iſſue is not remitted; and yet if the iſſue had accepted a feoffment within age, and had continued the taking of the profits when he came of full age, and then the tenant in tail had died, notwithſtanding his taking of the profits he had been remitted: for that which guides the remitter, is, if he be once in of the freehold without any laches: as if the heir of the diſſeiſor enfeoffs the heir of the diſſeiſee, who dies, and it deſcends to a ſecond heir upon whom the frank tenement is caſt by deſcent, who enters and takes the profits, and then the diſſeiſee dies, this is a remitter, *cauſa qua ſupra*.

Lit. pl. 3. 6.

Alſo if tenant in tail diſcontinue for life, and take a ſurrender of the leſſee, now is he remitted and ſeiſed again by force of the tail, and yet he cometh in by his own act: but this caſe differeth from all other caſes; becauſe the diſcontinuance was but particular at firſt, and the new gained reverſion is but by intendment and neceſſity of law; and therefore is but as it were *ab initio*, with a limitation to determine whenſoever the particular diſcontinuance endeth, and the eſtate cometh back to the antient right.

To proceed from caſes of remitter, which is a great branch of this rule, to other caſes: if executors do redeem goods pledged by their teſtator with their own money, the law doth convert ſo much goods as doth amount to the value of that they laid forth, to themſelves in property, and upon a plea of fully adminiſtred it ſhall be allowed: the reaſon is, becauſe it may be matter of neceſſity for the well adminiſtring of the goods of the teſtator, and executing their truſt that they diſburſe money of their own: for elſe perhaps the goods would be forfeited, and he that had them in pledge would not accept other goods but money, and ſo it is a liberty which the law gives them, and they cannot have any ſuit againſt themſelves; and therefore the law gives them leave to retain ſo much goods by way of allowance: and if there be two executors, and one of them pay the money, he may likewiſe retain againſt his companion, if he have notice thereof.

6 H. 8. pl. 3. Dyer.

But if there be an overplus of goods, above the value of that he ſhall diſburſe, then ought he by his claim to determine what goods he doth elect to have in value; or elſe before ſuch election, if his companion do ſell all the goods, he hath no remedy but in the ſpiritual court: for to ſay he ſhould be tenant in common with himſelf and his companion *pro rata* of that he doth lay out, the law doth reject thar courſe for intricateneſs.

3 Eliz. 187. pl. 8.

So if I have a leaſe for years worth 20 l. by the year, and grant unto I. D. a rent of 10 l. a year, and after make him my executor; now I. D. ſhall be charged with aſſets 10 l. only, and the other 10 l. ſhall be allowed and conſidered to him; and the reaſon is, becauſe the not refuſing ſhall be accounted no laches unto him, becauſe an executorſhip is *pium officium*, and matter of conſcience and truſt, and not like a purchaſe to a man's own uſe.

19 H. 8. pl. 7. in fine. 22 Aſſ. 52. F. Rec. in value 23.

Like law it is, where the debtor makes the debtee his executor, the debt ſhall be conſidered in the aſſets, notwithſtanding it be a thing in action.

2 H. 4. 21. Cond. 185. 2 H. 7. 5. 37 H. 6. 32.

So if I have a rent charge, and grant that upon condition, now though the condition be broken, the grantee's eſtate is not defeated till I have made my claim; but if after ſuch grant my father purchaſe the land, and it deſcend to me, now if the condition be broken, the rent ceaſeth without claim: but if I had

6 Ed. 6. cond. 133. Lit. pl. 135.

had purchaſed the land myſelf, then I had extincted mine own condition, becauſe I had diſabled myſelf to make my claim: and yet a condition collateral is not ſuſpended by taking back an eſtate; as if I make a feoffment in fee, upon condition that I. S. ſhall marry my daughter, and take a leaſe for life from my feoffee, if the feoffee break the condition I may claim to hold in by my fee-ſimple: but the caſe of the charge is otherwiſe, for if I have a rent charge iſſuing out of twenty acres, and grant the rent over upon condition, and purchaſe but one acre, the whole condition is extinct, and the poſſibility of the rent by reaſon of the condition, is as fully deſtroyed as if it had been a rent in *eſſe*. 20 H. 7. per Pol. 35 H. 6. Fitz. Barr. 162.

So if the King grant to me the wardſhip of I. S. the ſon and heir of I. S. when it falleth; becauſe an action of covenant lieth not againſt the King, I ſhall have the thing myſelf in intereſt. 30 H. 6. pl. Grants 91.

But if I lett land to I. S. rendring a rent with a condition of re-entry, and I. S. be attainted, whereby the leaſe cometh to the King, now the demand upon this land is gone, which would give me benefit of re-entry, and yet I ſhall not have it reduced without demand; and the reaſon of the difference is, becauſe my condition in this caſe is not taken away in right, but only ſuſpended by the privilege of the poſſeſſion; for if the King grant the leaſe over, the condition is revived as it was. 7 H. 6. 40.

Alſo if my tenant for life grant his eſtate to the King, now if I will grant my reverſion over, the King is not compellable to atturn, therefore it ſhall paſs by grant by deed without atturnment.

So if my tenant for life be, and I grant my reverſion *pur autre vie*, and the grantee die, living *ceſtuy que vie*, now the privity between tenant for life and me is not reſtored, and I have no tenant in *eſſe* to atturn; therefore I may paſs my reverſion without atturnment. *Quod nota*. 9 Ed. 2. Fitz. Atturnments 18.

So if I have a nomination to a church, and another hath the preſentation, and the preſentation comes to the King, now becauſe the King cannot be attendant, my nomination is turned to an abſolute patronage.

So if a man be ſeiſed in an * advowſon, and take a wife, and after a title of dower given her join in impropriating the church, and dieth; now becauſe the feme cannot have the turn becauſe of the perpetual incumbency, ſhe ſhall have all the turns during her life; for it ſhall not be diſimpropriated to the benefit of the heir contrary to the grant of tenant in fee-ſimple. 6 Ed. 6. Dy. 92.

But if a man grant the third preſentment to I. S. and his heirs, and impropriate the advowſon, now the grantee is without remedy, for he took his grant ſubject to that miſchief at firſt: and therefore it was his laches, and therefore not like the caſe of the dower; and this grant of the third avoidance is not like *tertia pars advocationis*, or *medietas advocationis* upon a tenancy in common of the advowſon: for if two tenants in common be, and an uſurpation be had againſt them, and the uſurper do impropriate, and one of the tenants in common do releaſe, and the other bring his writ of right *de medietate advocationis* and recover; now I take the law to be, that becauſe tenants in common ought to join in preſentment, which cannot now be, he ſhall have the whole patronage: for neither can there be an apportionment that he ſhould preſent all the turns, and his incumbent but to have a moiety of the profits, nor yet the act of impropriation ſhall not be defeated. But as if two tenants in common be of a ward, and they join in a writ of right of ward, and one releaſe, the other ſhall recover the entire ward, becauſe it cannot be divided: ſo ſhall it be in the other caſe, though it be an inheritance, and though he bring his action alone. 45 Ed. 3.

As if a diſſeiſor be diſſeiſed, and the firſt diſſeiſee releaſe to the ſecond diſſeiſor upon condition, and a deſcent be caſt, and the condition broken; now the mean diſſeiſor, whoſe right is revived, ſhall enter notwithſtanding this deſcent, becauſe his right was taken away by the act of a ſtranger.

But if I deviſe land by the ſtatute of † 32 H. VIII. and the heir of the deviſor

* Vide contra 2 E. 3. fo. 8. que per preſentment del feme ladvowſon eſt deveign diſimpropriate a touts jours quel eſt agree in Snr Cok. Rep. 7. fo. 8. a.

† Le contrary fuit reſolve in Martin Trott's caſe, Paſ. 32 Eliz in Com. Banco, & Pa. 1 Jac. ib. vide 7 R. 2. Scire fac. 3. 41. E. 3. 14. per Finchden.

enters and makes a feoffment in fee, and the feoffee dieth ſeiſed, this deſcent binds, and there ſhall not be a perpetual liberty of entry, upon the reaſon that he never had ſeiſin whereupon he might ground his action, but he is at a miſchief by his own laches: and like law is of the King's patentee; for I ſee no reaſonable difference between them and him in the remainder, which is Littleton's caſe.

But note, that the law by operation and matter in fact will never countervail and ſupply a title grounded upon a matter of record; and therefore if I be entitled unto a writ of error, and the land deſcend unto me, I ſhall never be remitted, no more ſhall I be unto an attaint, except I may alſo have a writ of right.

25 H. 8. Dy. 5.

So if upon my avowry for ſervices, my tenant diſclaim where I may have a writ of right as upon diſclaimer, if the land after deſcend to me, I ſhall never be remitted.

REGVLA X.

Verba generalia reſtringuntur ad habilitatem rei vel perſonae.

IT is a rule that the King's grants ſhall not be taken or conſtrued to a ſpecial intent; it is not ſo with the grants of a common perſon, for they ſhall be extended as well to a foreign intent as to a common intent; yet with this exception, that they ſhall never be taken to an impertinent or a repugnant intent: for all words, whether they be in deeds or ſtatutes, or otherwiſe, if they be general and not expreſs and preciſe, ſhall be reſtrained unto the fitneſs of the matter or perſon.

Perk. pl. 108. As if I grant common *in omnibus terris meis* in D. and I have in D. both open grounds and ſeveral, it ſhall not be ſtretched to common in my ſeveral, much leſs in my gardens and orchards.

14 H. 8. 2. So if I grant to a man *omnes arbores meas creſcentes ſupra terras meas* in D. he ſhall not have apple-trees, or other fruit-trees growing in my gardens or orchards, if there be any other trees upon my ground.

41 Ed. 3. 6. 19. So if I grant to I. S. an annuity of 10 l. a year *pro conſilio impenſo et impendendo*, if I. S. be a phyſician, it ſhall be underſtood of his counſel in phyſick; and if he be a lawyer, of his counſel in law.

So if I do let a tenement to I. S. near by my dwelling houſe in a borough, provided that he ſhall not erect or uſe any ſhop in the ſame without my licence, and afterwards I licenſe him to erect a ſhop, and I. S. is then a miller, he ſhall not by virtue of theſe general words erect a joiner's ſhop.

16 Eliz. 337. Dyer. So the ſtatute of chanteries, that willeth all lands to be forfeited, given or employed to a ſuperſtitious uſe, ſhall not be conſtrued of the glebe lands of parſonages: nay farther, if the lands be given to the parſon of D. to ſay a maſs in his church of D. this is out of the ſtatute, becauſe it ſhall be intended but as an augmentation of his glebe; but otherwiſe had it been, if it had been to ſay a maſs in any other church but his own.

So in the ſtatute of wrecks, that willeth that goods wreck'd where any live domeſtical creature remains in a veſſel, ſhall be preſerved to the uſe of the owner that ſhall make his claim by the ſpace of one year, doth not extend to freſh victuals or the like, which is impoſſible to keep without periſhing or deſtroying it; for in theſe and the like caſes general words may be taken, as was ſaid, to a rare and foreign intent, but never to an unreaſonable intent.

REGVLA XI.

Jura ſanguinis nullo jure civili dirimi poſſunt.

THEY be the very words of the civil law, which cannot be amended to explain this rule. *Haeres eſt nomen juris, filius eſt nomen naturae:* therefore corruption of blood taketh away the privity of the one, that is, of the heir, but not of the other, that is, of the ſon; therefore if a man be attainted and murdered by a ſtranger, the eldeſt ſon ſhall not have the appeal, becauſe the appeal is given to the heir, for the youngeſt ſons who are equal in blood

36 H. 6. 57, 58. 21 Ed. 3. 17.

ſhall

ſhall not have it; but if an attainted perſon be killed by his ſon, this is petty treaſon, for that the privity of a ſon remaineth: for I admit the law to be, that if the ſon kill his father or mother it is petty treaſon, and that there remaineth ſo much in our laws of the antient footſteps of *poteſtas patria* and natural obedience, which by the law of God is the very inſtance itſelf; and all other government and obedience is taken but by equity, which I add, becauſe ſome have thought to weaken the law in that point.

So if land deſcend to the eldeſt ſon of a perſon attainted from his anceſtor of the part of the mother held in knights ſervice, the guardian ſhall enter, and ouſt the father, becauſe the law giveth the father that prerogative in reſpect he is his ſon and heir; for of a daughter or a ſpecial heir in tail he ſhall not have it: but if the ſon be attainted, and the father covenant in conſideration of natural love to ſtand ſeiſed of land to his uſe, this is good enough to raiſe an uſe, becauſe the privity of a natural affection remaineth. F. N. Br. fo. 143.

So if a man be attainted and have a charter of pardon, and be returned of a jury between his ſon and I. S. the challenge remaineth; for he may maintain any ſuit of his ſon, notwithſtanding the blood be corrupted.

So by the ſtatute of 21 H. VIII. the ordinary ought to commit the adminiſtration of his goods that was attainted and purchaſed his charter of pardon, to his children, though born before the pardon, for it is no queſtion of his inheritance: for if one brother of the half blood die, the adminiſtration ought to be committed to his other brother of the half blood, if there be no nearer by the father. 5 Ed. 6. Adm. 47.

So if the uncle by the mother be attainted, and pardoned, and land deſcend from the father to the ſon within age held in ſocage, the uncle ſhall be guardian in ſocage; for that ſavoureth ſo little of the privity of heir, as the poſſibility to inherit ſhutteth out. 33 H. 6. 55.

But if a feme tenant in tail aſſent to the raviſher, and have no iſſue, and her couſin is attainted, and pardoned, and purchaſeth the reverſion, he ſhall not enter for a forfeiture. For though the law giveth it not in point of inheritance, but only as a perquiſite to any of the blood, ſo he be next in eſtate; yet the recompence is underſtood for the ſtain of his blood, which cannot be conſidered when it is once wholly corrupted before. 5 Ed. 4. 5.

So if a villain be attainted, yet the lord ſhall have the iſſues of his villain born before or after the attainder; for the lord hath them *jure naturae* but as the increaſe of a flock.

Quaere, whether if the eldeſt ſon be attainted and pardoned, the lord ſhall have aid of his tenants to make him a knight, and it ſeemeth he ſhall; for the words of the writ hath *filium primogenitum*, and not *filium et haeredem*, and the like writ he hath *pur file marrier* who is no heir. F. N. Br. Regiſter fol. 87.

REGVLA XII.

Receditur a placitis juris potius, quam injuriae et delicta maneant impunita.

THE law hath many grounds and poſitive learnings, which are not of the maxims and concluſions of reaſon; but yet are learnings received which the law hath ſet down and will not have called in queſtion: theſe may be rather called *placita juris* than *regulae juris*; with ſuch maxims the law will diſpenſe, rather than crimes and wrongs ſhould be unpuniſhed, *quia ſalus populi ſuprema lex*; and *ſalus populi* is contained in the repreſſing offences by puniſhment.

Therefore if an advowſon be granted to two, and the heirs of one of them, and an uſurpation be had, they both ſhall join in a writ of right of advowſon; and yet it is a ground in law, that a writ of right lieth of no leſs eſtate than a fee-ſimple; but becauſe the tenant for life hath no other ſeveral action in the law given him, and alſo that the jointure is not broken, and ſo the tenant in fee-ſimple cannot bring his writ of right alone; therefore rather than he ſhould be deprived wholly of remedy, and this wrong unpuniſhed, he ſhall join his companion with him, notwithſtanding the feebleneſs of his eſtate.

But

46 Ed. 3. 21. But if lands be given to two, and to the heirs of one of them, and they loſe in a *praecipe* by default, now they ſhall not join in a writ of right, becauſe the tenant for life hath a ſeveral action, *viz.* a *Quod ei deforciat*, in which reſpect the jointure is broken.

So if tenant for life and his leſſor join in a leaſe for years, and the leſſee commit waſte, they ſhall join in puniſhing this waſte, and *locus vaſtatus* ſhall go to the tenant for life, and the damages to him in reverſion; and yet an action of waſte lieth not for tenant for life; but becauſe he in the reverſion cannot have it alone, becauſe of the mean eſtate for life, therefore rather than the waſte ſhall be unpuniſhed, they ſhall join.

4; Ed. 3. 3. 22 H. 6. 24. So if two coparceners be, and they leaſe the land, and one of them die, and hath iſſue, and the leſſee commit waſte, the aunt and the iſſue ſhall join in puniſhing this waſte, and the iſſue ſhall recover the moiety of the place waſted, and the aunt the other moiety and the entire damages; and yet *actio injuriarum moritur cum perſona*, but *in favorabilibus magis attenditur quod prodeſt, quam quod nocet.*

20 Ed. 2. Fitz. deſcent. 16. So if a man recovers by erroneous judgment, and hath iſſue two daughters, and one of them is attainted, the writ of error ſhall be brought againſt the parceners, notwithſtanding the privity fail in the one.

33 Eliz. Alſo it is a poſitive ground, that the acceſſary in felony cannot be proceeded againſt, until the principal be tried; yet if a man upon ſubtlety and malice ſet a madman by ſome device to kill, and he doth ſo; now foraſmuch as the madman is excuſed becauſe he can have no will nor malice, the law accounteth the inciter as principal, though he be abſent, rather than the crime ſhall go unpuniſhed.

Fitz. Corone 459. M. 28. H. 6. Staundf. lib. 2 fol. 59. So it is a ground of the law, that the appeal of murder goeth not to the heir where the party murdered hath a wife, nor to the younger brother where there is an elder; yet if the wife murder her huſband, becauſe ſhe is the party offender, the appeal leaps over to the heir; and ſo if the ſon and heir murder his father, it goeth to the ſecond brother.

But if the rule be one of the higher ſort of maxims that are *regulae rationales*, and not *poſitivae*, then the law will rather endure a particular offence to eſcape without puniſhment, than violate ſuch a rule.

As it is a rule that penal ſtatutes ſhall not be taken by equity, and the ſtatute of 1 Ed. VI. enacts that thoſe that are attainted for ſtealing of horſes ſhall not have their clergy, the judges conceived, that this did not extend to him that ſhould ſteal but one horſe, and therefore procured a new act for it in 2 Ed. VI. cap. 33. And they had reaſon for it, as I take the law; for it is not like the caſe upon the ſtatute of Gloceſt. that gives the action of waſte againſt him that holds *pro termino vitae vel annorum*. It is true, that if a man holds but for a year he is within the ſtatute; for it is to be noted, that penal ſtatutes are taken ſtrictly and literally only in the point of defining and ſetting down the fact and the puniſhment, and in thoſe clauſes that do concern them; and not generally in words that are but circumſtances and conveyance in the putting of the caſe: and ſo ſee the diverſity, for if the law be, that for ſuch an offence a man ſhall loſe his right hand, and the offender hath had his right hand before cut off in the wars, he ſhall not loſe his left hand, but the crime ſhall rather paſs without the puniſhment which the law aſſigned, than the letter of the law ſhould be extended; but if the ſtatute of 1 Ed. VI. had been, that he that ſhould ſteal one horſe ſhould be ouſted of his clergy, then there had been no queſtion at all, but if a man had ſtolen more horſes than one, but that he had been within the ſtatute, *quia omne majus continet in ſe minus.*

Plow. 467. Lit. cap. 67. 46 Ed. 3. 31.

REGVLA XIII.

Non accipi debent verba in demonſtrationem falſam, quae competunt in limitationem veram.

THOUGH falſity of addition or demonſtration doth not hurt where you give the thing a proper name, yet nevertheleſs if it ſtand doubtful upon the words, whether they import a falſe reference and demonſtration, or whether they

they be words of reſtraint that limit the generality of the former name, the law will never intend error or falſhood.

Therefore if the pariſh of Hurſt do extend into the counties of Wiltſh. and Berkſh. and I grant my cloſe called Callis, ſituate and lying in the pariſh of Hurſt in the county of Wiltſh. and the truth is, that the whole cloſe lieth in the county of Berkſh. yet the law is, that it paſſeth well enough, becauſe there is a certainty ſufficient in that I have given it a proper name which the falſe reference doth not deſtroy, and not upon the reaſon that theſe words, "in the "county of Wiltſh." ſhall be taken to go to the pariſh only, and ſo be true in ſome ſort, and not to the cloſe, and ſo to be falſe: For if I had granted *omnes terras meas in parochia de Hurſt in com. Wiltſh.* and I had no lands in Wiltſh. but in Berkſh. nothing had paſt. 12 Eliz. 6. 291. 23 Eliz. Dyer 376. 7 Ed. 6. Dy. 56.

But in the principal caſe, if the cloſe called Callis had extended part into Wiltſh. and part into Berkſh. then only that part had paſſed which lay in Wiltſh. 9 Ed. 4. 7. 21 Ed 3. 18. 18 Eliz.

So if I grant *omnes et ſingulas terras meas in tenura I. D. quas perquiſivi de I. N. in indentura dimiſſionis fact' I. B. ſpecificat.* If I have land wherein ſome of theſe references are true, and the reſt falſe, and no land wherein they are all true, nothing paſſeth: as if I have land in the tenure of I. D. and purchaſed of I. N. but not ſpecified in the indenture to I. B. or if I have land which I purchaſed of I. N. and ſpecified in the indenture of demiſe to I. B. and not in the tenure of I. D. 29 Reg.

But if I have ſome land wherein all theſe demonſtrations are true, and ſome wherein part of them are true, and part falſe, then ſhall they be intended words of true limitation to paſs only thoſe lands wherein all thoſe circumſtances are true.

REGVLA XIV.

Licet diſpoſitio de intereſſe futuro ſit inutilis, tamen poteſt fieri declaratio praecedens quae ſortiatur effectum interveniente novo actu.

THE law doth not allow of grants except there be a foundation of an intereſt in the grantor; for the law that will not accept of grants of titles, or of things in action which are imperfect intereſts, much leſs will it allow a man to grant or incumber that which is no intereſt at all, but merely future.

But of declarations precedent before any intereſt veſted the law doth allow, but with this difference, ſo that there be ſome new act or conveyance to give life and vigour to the declaration precedent.

Now the beſt rule of diſtinction between grants and declarations is, that grants are never countermandable, not in reſpect of the nature of the conveyance or inſtrument, though ſometime in reſpect of the intereſt granted they are, whereas declarations evermore are countermandable in their natures.

And therefore if I grant unto you, that if you enter into an obligation to me of 100 l. and after do procure me ſuch a leaſe, that then the ſame obligation ſhall be void, and you enter into ſuch an obligation unto me, and afterwards do procure ſuch a leaſe, yet the obligation is ſimple, becauſe the defeiſance was made of that which was not. 20 Eliz. 19 H. 6. 62.

So if I grant unto you a rent charge out of white acre, and that it ſhall be lawful for you to diſtrain in all my other lands whereof I am now ſeiſed, and which I ſhall hereafter purchaſe; although this be but a liberty of diſtreſs, and no rent ſave only out of white acre, yet as to the lands afterwards to be purchaſed the clauſe is void. 27 Ed. 3.

So if a reverſion be granted to I. S. and I. D. a ſtranger by his deed do grant to I. S. that if he purchaſe the particular eſtate, he will atturn to the grant, this is a void atturnment, notwithſtanding he doth afterwards purchaſe the particular eſtate. 29 Ed. 3. 6. 24 Eliz.

But of declarations the law is contrary; as if the diſſeiſee make a charter of feoffment to I. S. and a letter of attorney to enter and make livery and ſeiſin, and deliver the deed of feoffment, and afterwards livery and ſeiſin is made accordingly, this is a good feoffment; and yet he had no other thing than a 13, 14 Eliz. 20, 21 Eliz. 25 Eliz.

right at the time of the delivery of the charter; but becauſe a deed of feoffment is but matter of declaration and evidence, and there is a new act which is the livery ſubſequent, therefore it is good in law.

M. 28 et 29 Eliz.

So if a man make a feoffment to I. S. upon condition to enfeoff I. N. within certain days, and there are deeds made both of the firſt feoffment and the ſecond, and letters of attorney accordingly, and both thoſe deeds of feoffment and letters of attorney are delivered at a time, ſo that the ſecond deed of feoffment and letters of attorney are delivered when the firſt feoffee had nothing in the land; and yet if both liveries be made accordingly, all is good.

36 Eliz.

So if I covenant with I. S. by indenture, that before ſuch a day I will purchaſe the manor of D. and before the ſame day I will levy a fine of the ſame land, and that the ſame fine ſhall be to certain uſes which I expreſs in the ſame indenture; this indenture to lead uſes being but matter of declaration, and countermandable at my pleaſure, will ſuffice, though the land be purchaſed after; becauſe there is a new act to be done, viz. the fine.

25 Eliz. 27 Eliz.

But if there were no new act, then otherwiſe it is; as if I covenant with my ſon in conſideration of natural love, to ſtand ſeiſed unto his uſe of the lands which I ſhall afterwards purchaſe, yet the uſe is void; and the reaſon is, becauſe there is no new act, nor tranſmutation of poſſeſſion following to perfect this inception; for the uſe muſt be limited by the feoffor, and not the feoffee, and he had nothing at the time of the covenant.

Com. Plowd. Rigden's caſe.

So if I deviſe the manor of D. by ſpecial name, of which at that time I am not ſeiſed, and after I purchaſe it, except I make ſome new publication of my will, this deviſe is void; and the reaſon is, becauſe that my death, which is the conſummation of my will, is the act of God, and not my act, and therefore no ſuch new act as the law requireth.

But if I grant unto I. S. authority by my deed to demiſe for years the land whereof I am now ſeiſed, or hereafter ſhall be ſeiſed; and after I purchaſe the lands, and I. S. my attorney doth demiſe them; this is a good demiſe, becauſe the demiſe of my attorney is a new act, and all one with a demiſe by myſelf.

21 Eliz.

But if I mortgage land, and after covenant with I. S. in conſideration of money which I receive of him, that after I have entred for the condition broken, I will ſtand ſeiſed to the uſe of the ſame I. S. and I enter, and this deed is enrolled, and all within the ſix months, yet nothing paſſeth away, becauſe this enrollment is no new act, but a perfective ceremony of the firſt deed of bargain and ſale; and the law is more ſtrong in that caſe, becauſe of the vehement relation which the enrollment hath to the time of the bargain and ſale, at what time he had nothing but a naked condition.

6 Ed. 6 Br.

So if two jointenants be, and one of them bargain and ſell the whole land, and before the enrollment his companion dieth, nothing paſſeth of the moiety accrued unto him by ſurvivor.

REGVLA XV.

In criminalibus ſufficit generalis malitia intentionis cum facto paris gradus.

ALL crimes have their conception in a corrupt intent, and have their conſummation and iſſuing in ſome particular fact; which though it be not the fact at which the intention of the malefactor levelled, yet the law giveth him no advantage of the error, if another particular enſue of as high a nature.

18 Eliz. Sanders caſe, Pl. com. 474.

Therefore if an impoiſoned apple be laid in a place to impoiſon I. S. and I. D. cometh by chance and eateth it, this is murder in the principal that is actor, and yet the malice *in individuo* was not againſt I. D.

Cr. Juſt. 30.

So if a thief find the door open, and come in by night and rob an houſe, and be taken with the mainour, and break a door to eſcape, this is burglary; yet the breaking of the door was without any felonious intent, but it is one entire act.

So if a caliver be diſcharged with a murderous intent at I. S. and the piece break and ſtrike into the eye of him that diſchargeth it, and killeth him, he is *felo de ſe*, and yet his intention was not to hurt himſelf; for *felonia de ſe* and murder

murder are *crimina paris gradus*. For if a man perſuade another to kill himſelf, and be preſent when he doth ſo, he is a murderer.

But *quaere*, if I. S. lay impoiſoned fruit for ſome other ſtranger his enemy, and his father or maſter come and eat it, whether this be petty treaſon, becauſe it is not altogether *crimen paris gradus*. Cr. Juſt. fol. 18, 19.

REGVLA XVI.

Mandata licita recipiunt ſtrictam interpretationem, ſed illicita latam et extenſam.

IN committing of lawful authority to another, a man may limit it as ſtrictly as it pleaſeth him, and if the party authorized do tranſgreſs his authority, though it be but in circumſtance expreſſed, it ſhall be void in the whole act.

But when a man is author and mover to another to commit an unlawful act, then he ſhall not excuſe himſelf by circumſtances not purſued.

Therefore if I make a letter of attorney to I. S. to deliver livery and ſeiſin in the capital meſſuage, and he doth it in another place of the land; or between the hours of two and three, and he doth it after or before; or if I make a charter of feoffment to I. D. and I. B. and expreſs the ſeiſin to be delivered to I. D. and my attorney deliver it to I. B. in all theſe caſes the act of the attorney, as to execute the eſtate, is void; but if I ſay generally to I. D. whom I mean only to enfeoff, and my attorney make it to his attorney, it ſhall be intended, for it is a livery to him in law. 10 H. 7. 19. 15, 16. 16 El. Dy. 337. 16 El. Dy. 337. 11 El. Dy. 283. 38 H. 8. D. 68.

But on the other ſide, if a man command I. S. to rob I. D. on Shooters-hill, and he doth it on Gads-hill; or to rob him ſuch a day, and he doth it the next day; or to kill I. D. and he doth it not himſelf but procureth I. B. to do it; or to kill him by poiſon, and he doth it by violence; in all theſe caſes, notwithſtanding the fact be not executed in circumſtance, yet he is acceſſary nevertheleſs. 18 El. Saunders caſe. Com. 475.

But if it be to kill I. S. and he killeth I. D. miſtaking him for I. S. then the acts are diſtant in ſubſtance, and he is not acceſſary. Ibidem.

And be it that the facts be of differing degrees, and yet of a kind:

As if a man bid I. S. to pilfer away ſuch things out of a houſe, and preciſely reſtrain him to do it ſome time when he is gotten in without breaking of the houſe, and yet he breaketh the houſe; yet he is acceſſary to the burglary: for a man cannot condition with an unlawful act, but he muſt at his peril take heed how he putteth himſelf into another man's hands.

But if a man bid one rob I. S. as he goeth to Sturbridge-fair, and he rob him in his houſe, the variance ſeems to be of ſubſtance, and he is not acceſſary. 18. Eliz. in Sanders caſe pl. Com. 475.

REGVLA XVII.

De fide et officio judicis non recipitur quaeſtio; ſed de ſcientia, ſive error ſit juris ſive facti.

THE law doth ſo much reſpect the certainty of judgments, and the credit and authority of judges, as it will not permit any error to be aſſigned that impeacheth them in their truſt and office, and in wilful abuſe of the ſame; but only in ignorance, and miſtaking either of the law or of the caſe and matter in fact.

And therefore if I will aſſign for error, that whereas the verdict paſſed for me, the court received it contrary, and ſo gave judgment againſt me, this ſhall not be accepted. F. N. br. fo. 21. 7 H. 7. 4.

So if I will alledge for error, that whereas I. S. offered to plead a ſufficient bar, the court refuſed it, and drove me from it, this error ſhall not be allowed. 3 H. 6. Aſſ. 3.

But the greateſt doubt is where the court doth determine of the verity of the matter in fact; ſo that it is rather a point of trial than a point of judgment, whether it ſhall be re-examined in error. 2 M. Dy. 114.

As if an appeal of maim be brought, and the court, by the aſſiſtance of the chirurgeons, adjudge it to be a maim, whether the party grieved may bring a writ of error; and I hold the law to be he cannot. 1 Mar. 5. 28 Aſſ. pl. 15. 21 H. 7. 40. 35.

So if one of the Prothonotaries of the common pleas bring an aſſize of his office,

8 H 4. 3. office, and alledge fees belonging to the ſame office in certainty, and iſſue is taken upon theſe fees, this iſſue ſhall be tried by the judges by way of examination, and if they determine it for the plaintiff, and he have judgment to recover arrearages accordingly, the defendant can bring no writ of error of this judgment, though the fees in truth be other.

1 Mar. Dy. 89. 5 Mar. Dy. 163.

8 H. 6. 23. 2 El 285. Dy. 43 Aſſ. 26. 41 Aſſ. 5. 39 Aſſ. 9. 5 Ed. 4. 3. 9 H. 7. 2. 19 H. 6. 52. 22 Aſſ. pl. 24. 19 Ed. 4. 6.

So if a woman bring a writ of dower, and the tenant plead her huſband is alive, this ſhall be tried by proofs and not by jury, and upon judgment given on either ſide no error lies.

So if *nul tiel record* be pleaded, which is to be tried by the inſpection of the record, and judgment be thereupon given, no error lieth.

So if in the aſſize the tenant ſaith, he is *counte de Dale, et nient noſme ccunte*, in the writ, this ſhall be tried by the records of the chancery, and upon judgment given no error lieth.

So if a felon demand his clergy, and read well and diſtinctly, and the court who is judge thereof do put him from his clergy wrongfully, error ſhall never be brought upon the attainder.

9 Aſſ. 8. F. N. Br. 21.

So if upon judgment given upon confeſſion or default, the court do aſſeſs damages, the defendant ſhall never bring a writ of error, though the damage be outragious.

And it ſeemeth in the caſe of maim, and ſome other caſes, that the court may diſmiſs themſelves of diſcuſſing the matter by examination, and put it to a jury, and then the party grieved ſhall have his attaint; and therefore it ſeemeth that the court that doth deprive a man of his action, ſhould be ſubject to an action; but that notwithſtanding the law will not have (as was ſaid in the beginning) the judges called in queſtion in the point of their office when they undertake to diſcuſs the iſſue, and that is the true reaſon: for to ſay that the reaſon of theſe caſes ſhould be, becauſe trial by the court ſhould be peremptory as trial by certificate (as by the Biſhop in caſe of baſtardy, or by the Marſhal of the King, *etc.*) the caſes are nothing alike; for the reaſon of thoſe caſes of certificate is, becauſe if the court ſhould not give credit to the certificate, but ſhould re-examine it, they have no other mean but to write again to the ſame Lord Biſhop, or the ſame Lord Marſhal, which were frivolous, becauſe it is not to be preſumed they would differ from their former certificate; whereas in theſe other caſes of error the matter is drawn before a ſuperiour court, to re-examine the errors of an inferiour court; and therefore the true reaſon is, as was ſaid, that to examine again that which the court had tried, were in ſubſtance to attaint the court.

21 Aſſ. 24. 11 H. 4. 41. 7 H. 6. 37.

And therefore this is a certain rule in error, that error in law is ever of ſuch matters as do appear upon record; and error in fact is ever of ſuch matters as are not croſſed by the record; as to alledge the death of the tenant at the time of the judgment given, nothing appeareth upon record to the contrary.

F. N. Br. 21.

So when the infant levies a fine, it appeareth not upon the record that he is an infant, therefore it is an error in fact, and ſhall be tried by inſpection during nonage.

But if a writ of error be brought in the King's bench of a fine levied by an infant, and the court by inſpection and examination doth affirm the fine, the infant, though it be during his infancy, ſhall never bring a writ of error in the parliament upon this judgment; not but that error lies after error, but becauſe it doth now appear upon the record that he is now of full age, therefore it can be no error in fact. And therefore if a man will aſſign for error that fact, that whereas the judges gave judgment for him, the clerks entred it in the roll againſt him, this error ſhall not be allowed; and yet it doth not touch the judges but the clerks: but the reaſon is, if it be an error, it is an error in fact; and you ſhall never alledge an error in fact contrary to the record.

2 R. 3. 20.

F. N. Br. 21. 9 Ed. 4. 3.

REGVLA XVIII.

Perſona conjuncta aequiparatur intereſſe proprio.

THE law hath that reſpect of nature and conjunction of blood, as in divers caſes it compareth and mateheth nearneſs of blood with conſideration of profit and intereſt; yea, and in ſome caſes alloweth of it more ſtrongly.

Therefore

Therefore if a man covenant, in conſideration of blood to ſtand ſeiſed to the uſe of his brother, or ſon, or near kinſman, an uſe is well raiſed of this covenant without tranſmutation of poſſeſſion; nevertheleſs it is true, that conſideration of blood is naught to ground a perſonal contract upon; as if I contract with my ſon, that in conſideration of blood I will give unto him ſuch a ſum of money, this is a *nudum pactum*, and no *aſſumpſit* lieth upon it; for to ſubject me to an action, there needeth a conſideration of benefit; but the uſe the law raiſeth without ſuit or action; and beſides, the law doth match real conſiderations with real agreements and covenants. 7 & 8 Eliz.

So if a ſuit be commenced againſt me, my ſon, or brother, I may maintain as well as he in remainder for his intereſt, or his lawyer for his fee; and if my brother have a ſuit againſt my nephew or couſin, yet it is at my election to maintain the cauſe of my nephew or couſin, though the adverſe party be nearer unto me in blood. 19 Ed. 4. 5. 19 Ed. 4. 22. 22 H. 6. 35. 21 H. 6. 15, 16. 22 H. 6. 5. 20 H. 6. 14 H. 6. 6.

So in challenges of juries, challenge of blood is as good as challenge within diſtreſs, and it is not material how far off the kindred be, ſo the pedigree can be conveyed in a certainty, whether it be of the half blood or whole. 14 H. 7. 2. 14 et 15 Eliz. 21 Ed 4. 75. Pl. com. 425.

So if a man menace me, that he will impriſon or hurt in body my father, or my child, except I make ſuch an obligation, I ſhall avoid this dureſſe, as well as if the dureſſe had been to mine own perſon: and yet if a man menace me, by taking away or deſtruction of my goods, this is no good dureſſe to plead: and the reaſon is, becauſe the law can make me reparation of that loſs, and ſo it cannot of the other. 25 H. 6. 17. 39 H 6. 50. 21 Ed. 4. 13. 18 H. 6. 21. 15 Ed. 4 1. 39 H. 6. 91. 7 Ed. 4. 21. 20 Aſſ. 14. Perk. f. 4.

So if a man under the years of twenty one, contract for the nurſing of his lawful child, this contract is good, and ſhall not be avoided by infancy, no more than if he had contracted for his own aliments or erudition.

REGVLA XIX.

Non impedit clauſula derogatoria, quo minus ab eadem poteſtate res diſſolvantur, a quibus conſtituuntur.

ACTS which are in their natures revocable, cannot by ſtrength of words be fixed or perpetuated; yet men have put in ure two means to bind themſelves from changing or diſſolving that which they have ſet down, whereof one is *clauſula derogatoria*, the other *interpoſitio juramenti*, whereof the former is only pertinent to the preſent purpoſe.

This *clauſula derogatoria* is by the common practical term called *clauſula non obſtante*, and is of two ſorts, *de praeterito, et de futuro*, the one weakening and diſannulling any matter paſt to the contrary, the other any matter to come; and this latter is that only whereof we ſpeak.

The *clauſula non obſtante de futuro*, the law judgeth to be idle and of no force, becauſe it doth deprive men of that which of all other things is moſt incident to human condition, and that is alteration or repentance.

Therefore if I make my will, and in the end thereof do add ſuch like clauſe, [Alſo my will is, if I ſhall revoke this preſent will, or declare any new will, except the ſame ſhall be in writing, ſubſcribed with the hands of two witneſſes, that ſuch revocation or new declaration ſhall be utterly void, and by theſe preſents I do declare the ſame not to be my will, but this my former will to ſtand, any ſuch pretended will to the contrary notwithſtanding] yet nevertheleſs this clauſe or any the like never ſo exactly penned, and although it do reſtrain the revocation but in circumſtance and not altogether, is of no force or efficacy to fortify the former will againſt the ſecond; but I may by paroll without writing repeal the ſame will and make a new one.

So if there be a ſtatute made that no ſheriff ſhall continue in his office above a year, and if any patent be made to the contrary it ſhall be void; and if there be any *clauſula de non obſtante* contained in ſuch patent to diſpenſe with this preſent act, that ſuch clauſe alſo ſhall be void; yet nevertheleſs a patent of the ſheriff's office made by the King for term of life, with a *non obſtante*, will be good in law contrary to ſuch ſtatute, which pretendeth to exclude *non obſtante's*; and the 28 Ed. 3. cap. 7. 24 Ed. 3. cap 9. 2 H. 7. 6.

reaſon is, becauſe it is an inſeparable prerogative of the crown to diſpenſe with politick ſtatutes, and of that kind; and then the derogatory clauſe hurteth not.

So if an act of parliament be made, wherein there is a clauſe contained that it ſhall not be lawful for the King, by authority of parliament, during the ſpace of ſeven years, to repeal and determine the ſame act, this is a void clauſe, and ſuch act may be repealed within the ſeven years; and yet if the parliament ſhould enact in the nature of the antient *lex regia*, that there ſhould be no more parliaments held, but that the King ſhould have the authority of the parliament; this act were good in law, *quia poteſtas ſuprema ſeipſum diſſolvere poteſt, ligare non poteſt:* for as it is in the power of a man to kill a man, but it is not in his power to ſave him alive, and to reſtrain him from breathing or feeling; ſo it is in the power of a parliament to extinguiſh or transfer their own authority, but not, whilſt the authority remains entire, to reſtrain the functions and exerciſes of the ſame authority.

So in 28 of K. H. VIII. chap. 17. there was a ſtatute made, that all acts that paſſed in the minority of Kings, reckoning the ſame under the years of twenty four, might be annulled and revoked by their letters patent when they came
14El.Dy.313. to the ſame years; but this act in the firſt of K. Ed. VI. who was then between the years of ten and eleven, cap. 11. was repealed, and a new law ſurrogate in place thereof, wherein a more reaſonable liberty was given; and wherein, though
Pl.Com. 563. other laws are made revocable according to the proviſion of the former law with ſome new form preſcribed, yet that very law of revocation, together with pardons, is made irrevocable and perpetual, ſo that there is a direct contrariety between theſe two laws; for if the former ſtands, which maketh all later laws during the minority of Kings revocable without exception of any law whatſoever, then that very law of repeal is concluded in the generality, and ſo itſelf made revocable: on the other ſide, that law making no doubt of the abſolute repeal of the firſt law, though itſelf were made during the minority, which was the very caſe of the former law in the new proviſion which it maketh, hath a preciſe exception, that the law of repeal ſhall not be repealed.

But the law is, that the firſt law by the impertinency of it was void *ab initio et ipſo facto* without repeal, as if a law were made, that no new ſtatute ſhould be made during ſeven years, and the ſame ſtatute be repealed within the ſeven years, if the firſt ſtatute ſhould be good, then no repeal could be made thereof within that time; for the law of repeal were a new law, and that were diſabled by the former law; therefore it is void in itſelf, and the rule holds, *perpetua lex eſt, nullam legem humanam ac poſitivam perpetuam eſſe; et clauſula quae abrogationem excludit initio non valet.*

Neither is the difference of the civil law ſo reaſonable as colourable, for they diſtinguiſh and ſay that a derogatory clauſe is good to diſable any later act, except you revoke the ſame clauſe before you proceed to eſtabliſh any later diſpoſition or declaration; for they ſay, that *clauſula derogatoria ad alias ſequentes voluntates poſita in teſtamento (viz. ſi teſtator dicat qd' ſi contigerit eum facere aliud teſtamentum non vult illud valere) operatur quod ſequens diſpoſitio ab ipſa clauſula reguletur, et per conſequens quod ſequens diſpoſitio ducatur ſine voluntate, et ſic quod non ſit attendendum.* The ſenſe is, that where a former will is made, and after a later will, the reaſon why, without an expreſs revocation of the former will, it is by implication revoked, is becauſe of the repugnancy between the diſpoſition of the former and the later.

But where there is ſuch a derogatory clauſe, there can be gathered no ſuch repugnancy; becauſe it ſeemeth that the teſtator had a purpoſe at the making of the firſt will to make ſome ſhew of a new will, which nevertheleſs his intention was ſhould not take place: but this was anſwered before; for if that clauſe were allowed to be good until a revocation, then could no revocation at all be made, therefore it muſt needs be void by operation of law at firſt. Thus much of *clauſula derogatoria.*

REGVLA XX.

Actus inceptus, cujus perfectio pendet ex voluntate partium, revocari poteſt; ſi autem pendet ex voluntate tertiae perſonae, vel ex contingenti, revocari non poteſt.

IN acts that are fully executed and conſummate, the law makes this difference, that if the firſt parties have put it in the power of a third perſon, or of a contingency, to give a perfection to their acts, then they have put it out of their own reach and liberty; therefore there is no reaſon they ſhould revoke them: but if the conſummation depend upon the ſame conſent, which was the inception, then the law accounteth it in vain to reſtrain them from revoking of it; for as they may fruſtrate it by omiſſion and *non feiſance*, at a certain time, or in a certain ſort or circumſtance, ſo the law permitteth them to diſſolve it by an expreſs conſent before that time, or without that circumſtance.

Therefore if two exchange land by deed, or without deed, and neither enter, they may make a revocation or diſſolution of the ſame exchange by mutual conſent, ſo it be by deed, but not by paroll; for as much as the making of an exchange needeth no deed, becauſe it is to be perfected by entry, which is a ceremony notorious in the nature of a livery; but it cannot be diſſolved but by deed, becauſe it diſchargeth that which is but title. F. N. Br. 36. 13 H. 7. 13, 14.

So if I contract with I. D. that if he lay me into my cellar three tuns of wine before Mich. that I will bring into his garner twenty quarters of wheat before Chriſtmas, before either of theſe days the parties may by aſſent diſſolve the contract; but after the firſt day there is a perfection given to the contract by action on the one ſide, and they may make croſs releaſes by deed or paroll, but never diſſolve the contract; for there is a difference between diſſolving the contract, and releaſe or ſurrender of the thing contracted for: as if leſſee for twenty years make a leaſe for ten years, and after he take a new leaſe for five years, yet this cannot inure by way of ſurrender: for a petty leaſe derived out of a greater cannot be ſurrendered back again, but inureth only by diſſolution of contract; for a leaſe of land is but a contract executory from time to time of the profits of the land, to ariſe as a man may ſell his corn or his tythe to ſpring or to be perceived for divers future years. E 36 Eliz.

But to return from our digreſſion: on the other ſide, if I contract with you for cloth at ſuch a price as I. S. ſhall name; there if I. S. refuſe to name, the contract is void; but the parties cannot diſcharge it, becauſe they have put it in the power of the third perſon to perfect.

So if I grant my reverſion, though this be an imperfect act before atturnment; yet becauſe the atturnment is the act of a ſtranger, this is not ſimply revocable, but by a policy or circumſtance in law, as by levying a fine, or making a bargain and ſale, or the like. 11 H. 7. 19. 1 R. 2. F. atturnment. 8.

So if I preſent a clerk to the Biſhop, now can I not revoke this preſentation, becauſe I have put it out of myſelf, that is, in the Biſhop, by admiſſion to perfect my act begun. 31 Ed. 1. Fitz. Q. Imp. 185. 14 Ed. 4. 2. 38 Ed. 3. 35.

The ſame difference appeareth in nominations and elections; as if I enfeoff I. S. upon condition to enfeoff ſuch a one as I. D. ſhall name within a year, and I. D. name I. B. yet before the feoffment, and within the year, I. D. may countermand his nomination, and name again, becauſe no intereſt paſſeth out of him. But if I enfeoff I. S. to the uſe of ſuch a one as I. D. ſhall name within a year, then if I. D. name I. B. it is not revocable, becauſe the uſe paſſeth preſently by operation of law. 14 Ed. 4. 2.

So in judicial acts the rule of the civil law holdeth, *ſententia interlocutoria revocari poteſt, definitiva non poteſt*; that is, that an order may be revoked, but a judgment cannot; and the reaſon is, becauſe there is a title of execution or bar given preſently unto the party upon judgment, and ſo it is out of the judge to revoke, in courts ordered by the common law.

REGVLA XXI.

Clauſula vel diſpoſitio inutilis per praeſumptionem vel cauſam remotam, ex poſt facto non fulcitur.

CLAUSULA vel diſpoſitio inutilis are ſaid, when the act or the words do work or expreſs no more than the law by intendment would have ſupplied; and therefore the doubling or iterating of that and no more, which the conceit of the law doth in a ſort prevent and preoccupate, is reputed nugation, and is not ſupported and made of ſubſtance either by a foreign intendment of ſome purpoſe, in regard whereof it might be material, nor upon any cauſe emerging afterwards, which may induce an operation of thoſe idle words or acts.

32 H. 8. 2 M. 1. Br. deviſes 41. And therefore if a man deviſe land at this day to his ſon and heir, this is a void deviſe, becauſe the diſpoſition of law did caſt the ſame upon the heir by deſcent; and yet if it be knight's ſervice land, and the heir within age, if he take by the deviſe, he ſhall have two parts of the profits to his own uſe, and the guardian ſhall have benefit but of the third; but if a man deviſe land to his two daughters, having no ſons, then the deviſe is good, becauſe he doth alter the diſpoſition of law; for by the law they ſhall take in copercenary, but by the deviſe they ſhall take jointly; and this is not any foreign collateral purpoſe, but in point of taking of eſtate.

29 H. 8. Dy. 12.

So if a man make a feoffment in fee, to the uſe of his laſt will and teſtament, theſe words of ſpecial limitation are void, and the law reſerveth the antient uſe to the feoffor and his heirs; and yet if the words might ſtand, then might it be authority by his will to declare and appoint uſes, and then though it were knight's ſervice land, he might diſpoſe the whole. As if a man make a feoffment in fee, to the uſe of the will and teſtament of a ſtranger, there the ſtranger may declare an uſe of the whole by his will, notwithſtanding it be knight's ſervice land; but the reaſon of the principal caſe is, becauſe uſes before the ſtatute of 27 H. VIII. were to have been diſpoſed by will, and therefore before that ſtatute an uſe limited in the form aforeſaid, was but a frivolous limitation, in regard of the old uſe that the law reſerved was deviſeable; and the ſtatute of 27 H. VIII. altereth not the law, as to the creating and limiting of any uſe, and therefore after that ſtatute, and before the ſtatute of wills, when no lands could have been deviſed, yet it was a void limitation as before, and ſo continueth to this day.

19 H. 8. 11. 5 Ed. 4. 8.

But if I make a feoffment in fee, to the uſe of my laſt will and teſtament, thereby to declare an eſtate tail and no greater eſtate, and after my death, and after ſuch eſtate declared ſhall expire, or in default of ſuch declaration then to the uſe of I. S. and his heirs, this is a good limitation; and I may by my will declare an uſe of the whole land to a ſtranger, though it be held in knight's ſervice, and yet I have an eſtate in fee ſimple by virtue of the old uſe during life.

19 H. 8. 11. 6 Ed. 4. 8.

32 H. 8. 43. Dy. 20 H. 8. 8. Dy. 7 El. 237. Dy.

So if I make a feoffment in fee to the uſe of my right heirs, this is a void limitation, and the uſe reſerved by the law doth take place; and yet if the limitation ſhould be good the heir ſhould come in by way of purchaſe, who otherwiſe cometh in by deſcent; but this is but a circumſtance which the law reſpecteth not, as was proved before.

10 El. 274. Dy.

But if I make a feoffment in fee to the uſe of my right heirs, and the right heirs of I. S. this is a good uſe, becauſe I have altered the diſpoſition of law; neither is it void for a moiety, but both our right heirs when they come in being ſhall take by joint purchaſe; and he to whom the firſt falleth ſhall take the whole, ſubject nevertheleſs to his companions title, ſo it have not deſcended from the firſt heir to the heir of the heir: for a man cannot be joint-tenant claiming by purchaſe, and the other by deſcent, becauſe they be ſeveral titles.

2 Ed. 3. 29. 30 E. 3. Fitz. Deviſe. 9.

So if a man having land on the part of his mother make a feoffment in fee to the uſe of himſelf and his heirs, this uſe, though expreſſed, ſhall not go to him and the heirs of the part of his father as a new purchaſe, no more than it ſhould have done if it had been a feoffment in fee nakedly without conſideration, for the intendment is remote. But if baron and feme be, and they join in a fine of the feme's land, and expreſs an uſe to the huſband and wife and their heirs:

4 M. 133. pl. 6. Dyer.

heirs: this limitation ſhall give a joint eſtate by entierties to them both; because the intendment of law would have conveyed the uſe to the feme alone. 5 Ed. 4. 8. 19 H. 8. 11.

And thus much touching foreign intendments.

For matter *ex poſt facto*, if a leaſe for life be made to two, and the ſurvivor of them, and they after make partition: now theſe words [and the ſurvivor of them] ſhould ſeem to carry purpoſe as a limitation, that either of them ſhould be ſtated in his part for both their lives ſeverally; but yet the law at the firſt conſtrueth the words but as words of dilating to deſcribe a joint eſtate; and if one of them die after partition, there ſhall be no occupant, but his part ſhall revert. 30 Aſſ. 8. Fitz. part 16. 31 H. 8. 46. Pl. 7. Dy.

So if a man grant a rent charge out of ten acres, and grant farther that the whole rent ſhall iſſue out of every acre, and diſtreſs accordingly, and afterwards the grantee purchaſe an acre: now this clauſe ſhould ſeem to be material to uphold the whole rent; but yet nevertheleſs the law at firſt accepteth of theſe words but as words of explanation, and then notwithſtanding the whole rent is extinct.

So if a gift in tail be made upon condition, that if tenant in tail die without iſſue, it ſhall be lawful for the donor to enter; and the donee diſcontinue and die without iſſue: now this condition ſhould ſeem material to give him benefit of entry, but becauſe it did at the firſt limit the eſtate according to the limitation of law, it worketh nothing upon this matter emergent afterward. 4 E. 6. Com. 33 per Hinde. 27 H. 8. 6.

So if a gift in tail be made of lands held in knight's ſervice with an expreſs reſervation of the ſame ſervice, whereby the land is held over, and the gift is with warranty, and the land is evicted, and other land is recovered in value againſt the donor, held in ſocage, now the tenure which the law makes between the donor and donee ſhall be in ſocage, and not in knight's ſervice; becauſe the firſt reſervation was according to the owelty of ſervice, which was no more than the law would have reſerved. 22 Aſſ. Pl. 52.

But if a gift in tail had been made of lands held in ſocage with a reſervation of knight's ſervice tenure, and with warranty, then, becauſe the intendment of law is altered, the new land ſhall be held by the ſame ſervice the loſt land was, without any regard at all to the tenure paramount: and thus much of matter *ex poſt facto*.

This rule faileth where that the law ſaith as much as the party, but upon foreign matter not pregnant and appearing upon the ſame act or conveyance, as if leſſee for life be, and he letts for twenty years, if he live ſo long; this limitation [if he live ſo long] is no more than the law ſaith, but it doth not appear upon the ſame conveyance or act, that this limitation is nugatory, but it is foreign matter in reſpect of the truth of the ſtate whence the leaſe is derived: and therefore if leſſee for life make a feoffment in fee, yet the ſtate of the leſſee for years is not enlarged againſt the feoffee; otherwiſe had it been if ſuch limitation had not been, but that it had been left only to the law.

So if tenant after poſſibility make a leaſe for years, and the donor confirms to the leſſee to hold without impeachment of waſte during the life of tenant in tail, this is no more than the law ſaith; but the privilege of tenant after poſſibility is foreign matter, as to the leaſe and confirmation: and therefore if tenant after poſſibility do ſurrender, yet the leſſee ſhall hold diſpuniſhable of waſte; otherwiſe had it been if no ſuch confirmation at all had been made. 16 H. 7. 4. per Keble. 24 Ed. 3. 28. Fitz.

Alſo heed muſt be given that it be indeed the ſame thing which the law intendeth, and which the party expreſſeth, and not only like or reſembling, and ſuch as may ſtand both together: for if I lett land for life rendring a rent, and by my deed warrant the ſame land, this warranty in law and warranty in deed are not the ſame thing, but may both ſtand together. 18 Ed. 3. 31 E. 1. Fitz. Vouch. 7. 289.

There remaineth yet a great queſtion on this rule.

A principal reaſon whereupon this rule is built, ſhould ſeem to be becauſe ſuch acts or clauſes are thought to be but declaratory, and added upon ignorance of the law, and *ex conſuetudine clericorum*, upon obſerving of a common form, and not upon purpoſe or meaning, and therefore whether by particular and preciſe words a man may not controul the intendment of the law.

To this I anſwer, that no preciſe or expreſs words will controul this intend-

ment of law; but as the general words are void, becauſe they ſay contrary to that the law ſaith; ſo are they which are thought to be againſt the law: and therefore if I deviſe my land being knight's ſervice tenure to my heir, and expreſs my intention to be, that the one part ſhould deſcend to him as the third part appointed by ſtatute, and the other he ſhall take by deviſe to his own uſe; yet this is void: for the law ſaith, he is in by deſcent of the whole, and I ſay he ſhall be in by deviſe, which is againſt the law.

Lit. pl. 364. But if I make a gift in tail, and ſay upon condition, that if tenant in tail diſcontinue and after die without iſſue, it ſhall be lawful for me to enter; this is a good clauſe to make a condition, becauſe it is but in one caſe, and doth not croſs the law generally: for if the tenant in tail in that caſe be diſſeiſed, and a deſcent caſt, and die without iſſue, I that am the donor ſhall not enter.

But if the clauſe had been provided, that if tenant in tail diſcontinue, or ſuffer a deſcent, or do any other act whatſoever, that after his death without iſſue it ſhall be lawful for me to enter: now this is a void condition, for it importeth a repugnancy to law; as if I would over-rule that where the law ſaith I am put to my action, I nevertheleſs will reſerve to myſelf an entry.

REGVLA XXII.

Non videtur conſenſum retinuiſſe ſi quis ex praeſcripto minantis aliquid immutavit.

ALTHOUGH choice and election be a badge of conſent, yet if the firſt ground of the act be dureſs, the law will not conſtrue that the dureſs doth determine, if the party dureſſed do make any motion or offer.

Therefore if a party menace me, except I make unto him a bond of 40 l. and I tell him that I will not do it, but I will make unto him a bond of 20 l. the law ſhall not expound this bond to be voluntary, but ſhall rather make conſtruction that my mind and courage is not to enter into the greater bond for any menace, and yet that I enter by compulſion notwithſtanding into the leſſer.

But if I will draw any conſideration to myſelf, as if I had ſaid, I will enter into your bond of 40 l. if you will deliver me that piece of plate, now the dureſs is diſcharged; and yet if it had been moved from the dureſſor, who had ſaid at the firſt, You ſhall take this piece of plate, and make me a bond of 40 l. now the gift of the plate had been good, and yet the bond ſhall be avoided by dureſs.

REGVLA XXIII.

Ambiguitas verborum latens verificatione ſuppletur; nam quod ex facto oritur ambiguum verificatione facti tollitur.

THERE be two ſorts of ambiguities of words, the one is *ambiguitas patens*, and the other *latens*. *Patens* is that which appears to be ambiguous upon the deed or inſtrument: *latens* is that which ſeemeth certain and without ambiguity, for any thing that appeareth upon the deed or inſtrument; but there is ſome collateral matter out of the deed, that breedeth the ambiguity.

Ambiguitas patens is never holpen by averment, and the reaſon is, becauſe the law will not couple and mingle matter of ſpecialty, which is of the higher account, with matter of averment, which is of inferior account in law; for that were to make all deeds hollow, and ſubject to averments, and ſo in effect, that to paſs without deed, which the law appointeth ſhall not paſs but by deed.

Therefore if a man give land to *I. D. et I. S. et haeredibus*, and do not limit to whether of their heirs, it ſhall not be ſupplied by averment to whether of them the intention was, the inheritance ſhould be limited.

So if a man give land in tail, though it be by will, the remainder in tail, and add a *proviſo* in this manner: Provided that if he, or they, or any of them do any, *etc.* according to the uſual clauſes of perpetuities, it cannot be averred upon the ambiguities of the reference of this clauſe, that the intent of the deviſor was, that the reſtraint ſhould go only to him in the remainder, and the heirs of his body; and that the tenant in tail in poſſeſſion was meant to be at large.

Of

Of theſe infinite caſes might be put, for it holdeth generally that all ambiguity of words by matter within the deed, and not out of the deed, ſhall be holpen by conſtruction, or in ſome caſe by election, but never by averment, but rather ſhall make the deed void for uncertainty.

But if it be *ambiguitas latens*, then otherwiſe it is: as if I grant my manor of S. to I. F. and his heirs, here appeareth no ambiguity at all; but if the truth be, that I have the manors both of South S. and North S. this ambiguity is matter in fact; and therefore it ſhall be holpen by averment, whether of them was that the party intended ſhould paſs.

So if I ſet forth my land by quantity, then it ſhall be ſupplied by election, and not averment.

As if I grant ten acres of wood in ſale, where I have an hundred acres, whether I ſay it in my deed or no, that I grant out of my hundred acres, yet here ſhall be an election in the grantee, which ten he will take.

And the reaſon is plain, for the preſumption of the law is, where the thing is only nominated by quantity, that the parties had indifferent intentions which ſhould be taken, and there being no cauſe to help the uncertainty by intention, it ſhall be holpen by election.

But in the former caſe the difference holdeth, where it is expreſſed, and where not; for if I recite, Whereas I am ſeiſed of the manor of North S. and South S. I leaſe unto you *unum manerium de S.* there it is clearly an election. So if I recite, Whereas I have two tenements in St. Dunſtan's, I leaſe unto you *unum tenementum*, there it is an election, not averment of intention, except the intent were of an election, which may be ſpecially averred.

Another ſort of *ambiguitas latens* is correlative unto theſe: for this ambiguity ſpoken of before, is when one name and appellation doth denominate divers things, and the ſecond, when the ſame thing is called by divers names.

As if I give lands to Chriſt-Church in Oxford, and the name of the corporation is *Eccleſia Chriſti in univerſitate Oxford*, this ſhall be holpen by averment, becauſe there appears no ambiguity in the words: for this variance is matter in fact, but the averment ſhall not be of intention, becauſe it doth ſtand with the words.

For in the caſe of equivocation the general intent includes both the ſpecial, and therefore ſtands with the words: but ſo it is not in variance, and therefore the averment muſt be of matter, that do endure quantity, and not intention.

As to ſay, of the precinct of Oxford, and of the Univerſity of Oxford, is one and the ſame, and not to ſay that the intention of the parties was, that the grant ſhould be to Chriſt-Church in that univerſity of Oxford.

REGVLA XXIV.

Licita bene miſcentur, formula niſi juris obſtet.

THE law giveth that favour to lawful acts, that although they be executed by ſeveral authorities, yet the whole act is good.

As when tenant for life is, the remainder in fee, and they join in a livery by deed or without, this is one good entire livery drawn from them both, and doth not inure to a ſurrender of the particular eſtate, if it be without deed *; or confirmation of thoſe in the remainder, if it be by deed; but they are all parties to the livery.

So if tenant for life be, the remainder in fee, and they join in granting a rent, this is one ſolid rent out of both their eſtates, and no double rent, or rent by confirmation.

So if tenant in tail be at this day, and he make a leaſe for three lives, and his own, this is a good leaſe, and warranted by the ſtatute of 32 H. VIII. and yet it is good in part by the authority which tenant in tail hath by the common Quaere.

* Semble clerement le ley d'eſtre contrary in ambideux caſes, car lou eſt ſans fait, eſt livery ſolement de ceſtui in le rem' & ſurr' de partic' ten', auterment ſera forfeiture de ſon eſtate, & lou eſt per fait, le livery paſſa ſolement de tenant, car il ad le franktenement, vide accordant Snr Co. l. 1. 79. b. 77. a. Plow. Com. 59. a. 140. 2 H. 5. 7. 13 H. 7. 14. 13 Ed. 4. 4. a. 27 H. 8. 13. M. 16. & 17. El. Dy. 339.

law,

law, that is, for his own life, and in part by the authority which he hath by the ſtatute, that is, for the other three lives.

So if a man, ſeiſed of lands deviſeable by cuſtom, and of other land held in knight's ſervice, deviſe all his lands, this is a good deviſe of all the land cuſtomary by the common law, and of two parts of the other land by the ſtatutes.

So in the ſtar-chamber a ſentence may be good, grounded in part upon the authority given the court by the ſtatute of 3 H. VII. and in part upon that antient authority which the court hath by the common law, and ſo upon ſeveral commiſſions.

But if there be any form which the law appointeth to be obſerved, which cannot agree with the diverſities of authorities, then this rule faileth.

As if three coparceners be, and one of them alien her purparty, the feoffee and one of the ſiſters cannot join in a writ *de part' facienda*, becauſe it behoveth the feoffee to mention the ſtatute in his writ.

Vide 1. Inſtit. 166. b.

REGVLA XXV.

Praeſentia corporis tollit errorem nominis, et veritas nominis tollit errorem demonſtrationis.

THERE be three degrees of certainty.

1. Preſence.
2. Name.
3. Demonſtration or reference.

Whereof the preſence the law holdeth of greateſt dignity, the name in the ſecond degree, and the demonſtration or reference in the loweſt, and always the error or falſity in the leſs worthy.

And therefore if I give a horſe to I. D. being preſent, and ſay unto him, I. S. take this; this is a good gift, notwithſtanding I call him by a wrong name: but ſo had it not been if I had delivered him to a ſtranger to the uſe of I. S. where I meant I. D.

So if I ſay unto I. S. Here I give you my ring with the ruby, and deliver it with my hand, and the ring bear a diamond and no ruby, this is a good gift notwithſtanding I name it amiſs.

So had it been if by word or writing, without the delivery of the thing itſelf, I had given the ring with the ruby, although I had no ſuch, but only one with a diamond which I meant, yet it would have paſſed.

So if I by deed grant unto you, by general words, all the lands that the King hath paſſed unto me by letters patents dated 10 May, unto this preſent indenture annexed, and the patent annexed have date 10 July; yet if it be proved that that was the true patent annexed, the preſence of the patent maketh the error of the date recited not material; yet if no patent had been annexed, and there had been alſo no other certainty given, but the reference of the patent, the date whereof was miſ-recited, although I had no other patent ever of the King, yet nothing would have paſſed.

Like law is it, but more doubtful, where there is not a preſence, but a kind of repreſentation, which is leſs worthy than a preſence, and yet more worthy than a name or reference.

As if I covenant with my ward, that I will tender unto him no other marriage, than the gentlewoman whoſe picture I delivered him, and that picture hath about it *aetatis ſuae anno* 16. and the gentlewoman is ſeventeen years old; yet nevertheleſs if it can be proved that the picture was made for that gentlewoman, I may, notwithſtanding this miſtaking, tender her well enough.

So if I grant you for life a way over my land, according to a plot intended between us, and after I grant unto you and your heirs a way according to the firſt plot intended, whereof a table is annexed to theſe preſents, and there be ſome ſpecial variance between the table and the original plot, yet this repreſentation ſhall be certainty ſufficient to lead unto the firſt plot; and you ſhall have the way in fee nevertheleſs, according to the firſt plot, and not according to the table.

So

So if I grant unto you by general words the land which the King hath granted me by his letters patents, *quarum tenor ſequitur in haec verba, etc.* and there be ſome miſtaking in the recital and variance from the original patent, although it be in a point material, yet the repreſentation of this whole patent ſhall be as the annexing of the true patent, and the grant ſhall not be void by this variance.

Now for the ſecond part of this rule, touching the name and the reference, for the explaining thereof, it muſt be noted what things ſound in demonſtration or addition: as firſt in lands, the greateſt certainty is, where the land hath a name proper, as "the manor of Dale, Grandfield," *etc.* the next is equal to that, when the land is ſet forth by bounds and abuttals, as "a cloſe of paſture "bounding on the eaſt part upon Emſden-wood, on the ſouth upon" *etc.* It is alſo a ſufficient name to lay the general boundary, that is, ſome place of larger precinct, if there be no other land to paſs in the ſame precinct, as "all my lands "in Dale, my tenement in S. Dunſtan's pariſh," *etc.*

A farther ſort of denomination is to name lands by the attendancy they have to other lands more notorious, as "parcel of my manor of D. belonging to ſuch "a college lying upon Thames bank."

All theſe things are notes found in denomination of lands, becauſe they be ſigns local, and therefore of property to ſignify and name a place; but theſe notes that ſound only in demonſtration and addition, are ſuch as are but tranſitory and accidental to the nature of the place.

As *modo in tenura et occupatione* of the proprietary, tenure or poſſeſſion is but a thing tranſitory in reſpect of land; *Generatio venit, generatio migrat, terra autem manet in aeternum.*

So likewiſe matter of conveyance, title, or inſtrument.

As, *quae perquiſivi de I. D. quae deſcendebant a I. N. patre meo*, or, *in praedicta indentura dimiſſionis*, or, *in praedictis literis patentibus ſpecificat'.*

So likewiſe *continent' per aeſtimationem* 20 *acras*, or if *(per aeſtimationem)* be left out, all is one, for it is underſtood, and this matter of meaſure, although it ſeem local, yet it is indeed but opinion and obſervation of men.

The diſtinction being made, the rule is to be examined by it.

Therefore if I grant my cloſe called Dale in the pariſh of Hurſt, in the county of Southampton, and the pariſh likewiſe extendeth into the county of Berkſhire, and the whole cloſe of Dale lyeth in the county of Berkſhire; yet becauſe the parcel is eſpecially named, the falſity of the addition hurteth not, and yet this addition is found in name, but (as it was ſaid) it was leſs worthy than a proper name.

So if I grant *tenementum meum*, or *omnia tenementa mea* (for the univerſal and indefinite to this purpoſe are all one) *in parochia Sancti Butolphi extra Aldgate* (where the verity is *extra Biſhopſgate) in tenura Guilielmi*, which is true, yet this grant is void, becauſe that which ſounds in denomination is falſe, which is the more worthy; and that which ſounds in addition is true, which is the leſs*; and though *in tenura Guilielmi*, which is true, had been firſt placed, yet it had been all one.

But if I grant *tenementum meum quod perquiſivi de R. C. in Dale*, where the truth was *T. C.* and I have no other tenements in D. but one, this grant is good†, becauſe that which ſoundeth in name viz. *in Dale* is true, and that which ſounded in addition (viz. *quod perquiſivi, etc.*) is only falſe.

So if I grant *prata mea in Dale continentia* 10 *acras*, and they contain indeed twenty acres, the whole twenty paſs.

So if I grant all my lands, being parcels *manerii de D. in praedictis literis patentibus ſpecificat'*, and there be no letters patents, yet the grant is good enough.

The like reaſon holds in demonſtrations of perſons, that have been declared in demonſtration of lands and places, the proper name of every one is in certainty worthieſt: next are ſuch appellations as are fixed to his perſon, or at leaſt of continuance, as, ſon of ſuch a man, wife of ſuch a huſband; or addition of office, as, clerk of ſuch a court, *etc.* and the third are actions or accidents, which

* Semble icy le grant uſt eſte aſſets bon, come fuit reſolu per cur', Co. lib. 3. fo. 10. a. vid. 33 H. 8. Dy. 50. b. 12 El. ib. 292. . et Co. lib. 2. fo. 33. a.

† Vide ib. que contraria eſt lex, car icy auxi le primer certainty eſt faux.

found no way in appellation or name, but only in circumſtance, which are leſs worthy, although they may have a proper particular reference to the intention of the grant.

And therefore if an obligation be made to *I. S. filio et haeredi G. S.* where indeed he is a baſtard, yet this obligation is good.

So if I grant land *Epiſcopo nunc Londinenſi, qui me erudivit in pueritia*, this is a good grant, although he never inſtructed me.

But *e converſo*, if I grant land to *I. S. filio et haeredi G. S.* and it be true that he is ſon and heir unto G. S. but his name is Thomas, this is a void grant.

Or if in the former grant it was the Biſhop of Canterbury who taught me in my childhood, yet ſhall it be good (as was ſaid) to the Biſhop of London, and not to the Biſhop of Canterbury.

The ſame rule holdeth of denomination of times, which are ſuch a day of the month, ſuch a day of the week, ſuch a Saint's day or eve, to day, to morrow; theſe are names of times.

But the day that I was born, the day that I was married; theſe are but circumſtances and addition of times.

And therefore if I bind myſelf to do ſome perſonal attendance upon you upon Innocents day, being the day of your birth, and you were not born that day, yet ſhall I attend.

There reſteth two queſtions of difficulty yet upon this rule, firſt, Of ſuch things whereof men take not ſo much note as that they ſhall fail of this diſtinction of name and addition.

As, "my box of ivory lying in my ſtudy ſealed up with my ſeal of arms; my "ſuit of arras with the ſtory of the nativity and paſſion;" of ſuch things there can be no name, but all is of deſcription, and of circumſtance, and of theſe I hold the law to be, that preciſe truth of all recited circumſtances is not required.

But in ſuch things *ex multitudine ſignorum colligitur identitas vera*, therefore though my box were not ſealed, and although the arras had the ſtory of the nativity, and not of the paſſion, if I had no other box, nor no other ſuit, the gifts are good; and there is certainty ſufficient, for the law doth not expect a preciſe deſcription of ſuch things as have no certain denomination.

Secondly, Of ſuch things as do admit the diſtinction of name and addition, but the notes fall out to be of equal dignity all of name or addition.

As, *prata mea juxta communem foſſam in D.* whereof the one is true, the other falſe; or *tenementum meum in tenura Guilielmi, quod perquiſivi de R. C. in praedict' indent' ſpecificat'*, whereof one is true, and two are falſe; or two are true, and one falſe.

So *ad curiam quam tenebat die Mercurii tertio die Martii*, whereof the one is true, the other falſe.

In theſe caſes the former rule, *ex multitudine ſignorum, etc.* holdeth not; neither is the placing of the falſity or verity firſt or laſt material, but all muſt be true, or elſe the grant is void; always underſtood, that if you can reconcile all the words, and make no falſity, that is quite out of this rule, which hath place only where there is a direct contrariety, or falſity not to be reconciled to this rule.

Vide livers avant dit pur ceſt auxi.

As if I grant all my land in D. *in tenura I. S.* which I purchaſed of I. N. ſpecified in a demiſe to I. D. and I have land in D. whereof in part of them all theſe circumſtances are true, but I have other lands in D. wherein ſome of them fail, this grant will not paſs all my land in D. for there theſe are references, and no words of falſity or error, but of limitation and reſtraint.

THE

THE USE of the LAW; FOR Preſervation of our Perſons, Goods, and Good Names.

According to the practice of the Laws and Cuſtoms of this Land.

THE uſe of the law conſiſteth principally in theſe three things:
I. To ſecure mens perſons from death and violence.
II. To diſpoſe the property of their goods and lands.
III. For preſervation of their good names from ſhame and infamy.

The uſe of the law, and wherein it principally conſiſteth.

For ſafety of perſons, the law provideth that any man ſtanding in fear of another, may take his oath before a juſtice of peace, that he ſtandeth in fear of his life, and the juſtice ſhall compel the other to be bound with ſureties to keep the peace.

Surety to keep the peace.

If any man beat, wound, or maim another, or give falſe ſcandalous words that may touch his credit, the law giveth thereupon an action of the caſe for the ſlander of his good name; and an action of battery, or an appeal of maim, by which recompence ſhall be recovered, to the value of the hurt, damage or danger.

Action for ſlander, battery, *etc.*

If any man kill another with malice, the law giveth an appeal to the wife of the dead, if he had any, or to the next of kin that is heir, in default of a wife; by which appeal the defendant convicted is to ſuffer death, and to loſe all his lands and goods: but if the wife or heir will not ſue, or be compounded withal, yet the King is to puniſh the offence by indictment or preſentment of a lawful inqueſt and trial of the offender before competent judges; whereupon being found guilty, he is to ſuffer death, and to loſe his lands and goods.

Appeal of murder given to the next of kin.

If one kill another upon a ſudden quarrel, this is man-ſlaughter, for which the offender muſt die, except he can read; and if he can read, yet muſt he loſe his goods, but no lands.

Man-ſlaughter, when a forfeiture of goods, and when not.

And if a man kill another in his own defence, he ſhall not loſe his life, nor his lands, but he muſt loſe his goods, except the party ſlain did firſt aſſault him, to kill, rob, or trouble him by the high-way ſide, or in his own houſe, and then he ſhall loſe nothing.

And if a man kill himſelf, all his goods and chattels are forfeited, but no lands.

Felo de ſe.

If a man kill another by misfortune, as ſhooting an arrow at a butt or mark, or caſting a ſtone over a houſe, or the like, this is loſs of his goods and chattels, but not of his lands, nor life.

Felony by miſchance.

If a horſe, or cart, or a beaſt, or any other thing do kill a man, the horſe, beaſt, or other thing is forfeited to the crown, and is called a *Deodand*, and uſually granted and allowed by the King to the biſhop almoner, as goods are of thoſe that kill themſelves.

Deodand.

The cutting out of a man's tongue, or putting out his eyes maliciouſly, is felony; for which the offender is to ſuffer death, and loſe his lands and goods.

But for that all puniſhment is for example's ſake, it is good to ſee the means whereby offenders are drawn to their puniſhment; and firſt for matter of the peace.

Cutting out tongues, and putting out eyes, felony.

The ancient laws of England, planted here by the Conqueror, were, that there ſhould be officers of two ſorts in all the parts of this realm to preſerve the peace:
1. *Conſtabularii pacis.*
2. *Conſervatores pacis.*

The office of the conſtable was, to arreſt the parties that he had ſeen breaking the peace, or in fury ready to break the peace, or was truly informed by others, or by their own confeſſion, that they had freſhly broken the peace; which perſons he might impriſon in the ſtocks, or in his own houſe, as his or their quality required, until they had become bounden with ſureties to keep the peace; which obligation

The office of the conſtable.

obligation from thenceforth was to be ſealed and delivered to the conſtable to the uſe of the King; and that the conſtable was to ſend to the King's exchequer or chancery, from whence proceſs ſhould be awarded to levy the debt, if the peace were broken.

But the conſtable could not arreſt any, nor make any put in bond upon complaint of threatning only, except they had ſeen them breaking the peace, or had come freſhly after the peace was broken. Alſo, theſe conſtables ſhould keep watch about the town for the apprehenſion of rogues and vagabonds, and night-walkers, and eves-droppers, ſcouts, and ſuch like, and ſuch as go armed. And they ought likewiſe to raiſe hue and cry againſt murderers, man-ſlayers, thieves and rogues.

High-conſtables for every hundred. Petty conſtables for every village.

Of this office of conſtable there were high conſtables, two of every hundred; petty conſtables, one in every village: they were in ancient time all appointed by the ſheriff of the ſhire yearly in his court called the Sheriff's Turn, and there they received their oath. But at this day they are appointed either in the law-day of that precinct wherein they ſerve, or elſe by the high conſtable in the ſeſſions of the peace.

The King's bench firſt inſtituted, and its juriſdiction.

The Sheriff's Turn is a court very ancient, incident to his office. At the firſt it was erected by the Conqueror, and called the King's bench, appointing men ſtudied in the knowledge of the laws to execute juſtice, as ſubſtitutes to him, in his name, which men are to be named *Juſticiarii ad placita coram rege aſſignati*: one of them being called *capitalis juſticiarius*, the reſt his fellows; in number as pleaſeth the King: of late but three *juſticiarii*, holden by patent. In this court every man above twelve years of age was to take his oath of allegiance to the King; if he were bound, then his lord to anſwer for him. In this court the conſtables were appointed and ſworn; breakers of the peace puniſhed by fine and impriſonment; the parties beaten or hurt recompenſed upon complaints of damages; all appeals of murder, maim, robbery, decided; contempts againſt the crown, publick annoyances againſt the people, treaſons and felonies, and all other matters of wrong betwixt party and party for lands and goods.

Court of Marſhalſea erected, and its juriſdiction within 12 miles of the chief tunnel, *etc.*

But the King ſeeing the realm grow daily more and more populous, and that this one court could not diſpatch all, did firſt ordain that his marſhal ſhould keep a court, for controverſies ariſing within the verge, which is within twelve miles of the chiefeſt tunnel of the court; which did but eaſe the King's bench in matters only concerning debts, covenants, and ſuch like, of thoſe of the King's houſhold only; never dealing in breaches of the peace, or concerning the crown by any other perſons, or any pleas of lands.

Sheriff's Turn inſtituted upon the diviſion of England into counties, *etc.* Likewiſe called *Curia viſus franci plegii.*

Inſomuch, as the King, for farther eaſe, having divided this kingdom into counties, and committing the charge of every county to a lord or earl, did direct that thoſe earls, within their limits, ſhould look to the matter of the peace, and take charge of the conſtables, and reform publick annoyances, and ſwear the people to the crown, and take pledges of the freemen for their allegiance; for which purpoſe the county did once every year keep a court, called the Sheriff's Turn; at which all the county (except women, clergy, children under twelve, and aged above ſixty) did appear to give or renew their pledges for allegiance. And the court was called, *Curia viſus franci plegii*, a view of the pledges of freemen; or, *Turna comitatus.*

Subdiviſion of the county court into hundreds.

At which meeting or court there fell, by occaſion of great aſſemblies, much blood-ſhed, ſcarcity of victuals, mutinies, and the like miſchiefs, which are incident to the congregations of people, by which the King was moved to allow a ſubdiviſion of every county into hundreds, and every hundred to have a court, whereunto the people of every hundred ſhould be aſſembled twice a year for ſurvey of pledges, and uſe of that juſtice which was formerly executed in that grand court for the county; and the count or earl appointed a bailiff under him to keep the hundred court.

The charge of the county taken from the earls, and committed to the ſheriff.

But in the end, the Kings of this realm found it neceſſary to have all execution of juſtice immediately from themſelves, by ſuch as were more bound, than earls, to that ſervice, and readily ſubject to correction for their negligence or abuſe; and therefore took themſelves the appointing a ſheriff yearly in every county,

calling

calling them *Vicecomites*, and to them directed ſuch writs and precepts for executing juſtice in the county, as fell out needful to have been diſpatched, committing to the ſheriff *cuſtodiam comitatus*; by which the earls were ſpared of their toils and labours, and that was laid upon the ſheriffs. So as now the ſheriff doth all the King's buſineſs in the county, and that is now called the Sheriff's Turn; that is to ſay, he is judge of this grand court for the county, and alſo of all hundred courts not given away from the crown.

The ſheriff is judge of all hundred courts, *etc.*

He hath another court called the county court belonging to his office, wherein men may ſue monthly for any debt or damages under 40 s. and may have writs for to replevy their cattel diſtrained and impounded by others, and there try the cauſe of their diſtreſs; and by a writ called *juſticies*, a man may ſue for any ſum; and in this court the ſheriff by a writ called an *exigent* doth proclaim men ſued in courts above to render their bodies, or elſe they be out-lawed.

County court kept monthly by the ſheriff.

This ſheriff doth ſerve the King's writs of proceſs, be they ſummons, or attachments to compel men to anſwer to the law, and all writs of execution of the law, according to judgments of ſuperior courts, for taking of mens goods, lands, or bodies, as the cauſe requireth.

The office of the ſheriff.

The hundred courts were moſt of them granted to religious men, noblemen, and others of great place. And alſo many men of good quality have attained by charter, and ſome by uſage within manors of their own, liberty of keeping law-days, and to uſe there juſtice appertaining to a law-day.

Hundred-courts to whom at firſt granted.

Whoſoever is lord of the hundred court, is to appoint two high conſtables of the hundred, and alſo is to appoint in every village a petty conſtable, with a tithing-man to attend in his abſence, and to be at his commandment when he is preſent, in all ſervices of his office for his aſſiſtance.

Lord of the hundred to appoint two high conſtables.

There have been, by uſe and ſtatute law (beſides ſurveying of the pledges of freemen, and giving the oath of allegiance, and making conſtables) many additions of powers and authority given to the ſtewards of leets and law-days, to be put in ure in their courts; as for example, they may puniſh inn-keepers, victuallers, bakers, butchers, poulterers, fiſhmongers, and tradeſmen of all ſorts, ſelling with under-weights or meaſures, or at exceſſive prices, or things unwholeſome, or ill made, in deceit of the people. They may puniſh thoſe that do ſtop, ſtraiten, or annoy the high-ways, or do not, according to the proviſion enacted, repair or amend them, or divert water-courſes, or deſtroy fry of fiſh, or uſe engines or nets to take deer, conies, pheaſants, or partridges, or build pigeon-houſes; except he be lord of the manor, or parſon of the church. They may alſo take preſentment upon oath of the twelve ſworn jury before them of all felonies; but they cannot try the malefactors, only they muſt by indenture deliver over thoſe preſentments of felony to the judges, when they come their circuits into that county. All thoſe courts before mentioned are in uſe, and exerciſed as law at this day, concerning the ſheriff's law-days and leets, and the offices of high conſtables, petty conſtables, and tithing-men; howbeit, with ſome further additions by ſtatute laws, laying charge upon them for taxation for poor, for ſoldiers, and the like, and dealing without corruption, and the like.

What matters they enquire of in leets and law-days.

Conservators of the peace were in ancient times certain, which were aſſigned by the King to ſee the peace maintained, and they were called to the office by the King's writ, to continue for term of their lives, or at the King's pleaſure.

Conſervators of the peace by writ for term of life, or at the Kings pleaſure.

For this ſervice, choice was made of the beſt men of calling in the country, and but few in the ſhire. They might bind any man to keep the peace, and to good behaviour, by recognizance to the King with ſureties, and they might by warrant ſend for the party, directing their warrant to the ſheriff or conſtable, as they pleaſe, to arreſt the party and bring him before them. This they uſed to do, when complaint was made by any that he ſtood in fear of another, and ſo took his oath; or elſe where the conſervator himſelf did, without oath or complaint, ſee the diſpoſition of any man inclined to quarrel and breach of the peace, or to miſbehave himſelf in ſome outragious manner of force or fraud: there by his own diſcretion he might ſend for ſuch a fellow, and make him find ſureties of the

What their office was.

peace, or of his good behaviour, as he ſhould ſee cauſe; or elſe commit him to the gaol if he refuſed.

Conſervators of the peace by virtue of their office.

The judges of either bench in Weſtminſter, barons of the exchequer, maſter of the rolls, and juſtices in eyre and aſſizes in their circuits, were all, without writ, conſervators of the peace in all ſhires of England, and continue to this day.

Juſtices of peace ordained in lieu of conſervators.

But now at this day conſervators of the peace are out of uſe, and in lieu of them there are ordained juſtices of peace, aſſigned by the King's commiſſions in every county, which are moveable at the King's pleaſure; but the power of placing and diſplacing juſtices of the peace is by uſe delegated from the King to the Chancellor.

Power of placing delegated to the Chancellor.

That there ſhould be juſtices of peace by commiſſions, it was firſt enacted by a ſtatute made 1 Edw. III. and their authority augmented by many ſtatutes made ſince in every King's reign.

To fine of fenders to the crown, but not to re compenſe the party grieved. parl. ſtat. 17 R. 2. cap. 10 et v. Dyer 69. b. Ils ount poier d'inquier de murder car ceo eſt felon.

They are appointed to keep four ſeſſions every year; that is, every quarter one. Theſe ſeſſions are a ſitting of the juſtices to diſpatch the affairs of their commiſſions. They have power to hear and determine, in their ſeſſions, all felonies, breaches of the peace, contempts and treſpaſſes, ſo far as to fine the offender to the crown, but not to award recompence to the party grieved.

* Authority of the juſtices of peace, *etc.*

* They are to ſuppreſs riots and tumults, to reſtore poſſeſſions forcibly taken away, to examine all felons apprehended and brought before them; to ſee impotent poor people, or maimed ſoldiers provided for, according to the laws; and rogues, vagabonds, and beggars puniſhed. They are both to licenſe and ſuppreſs ale-houſes, badgers of corn and victuals, and to puniſh foreſtallers, regrators, and engroſſers.

Beating, killing, burning of houſes.

Through theſe, in effect, run all the county ſervices to the crown, as taxations of ſubſidies, muſtering men, arming them, and levying forces, that is done by a ſpecial commiſſion or precept from the King. Any of theſe juſtices, by oath taken by a man that he ſtandeth in fear that another man will beat him, or kill him, or burn his houſe, are to ſend for the party by warrant of attachment directed to the ſheriff or conſtable, and then to bind the party with ſureties by recognizance to the King, to keep the peace, and alſo to appear at the next ſeſſions of the peace; at which next ſeſſions, when every juſtice of peace hath therein delivered all their recognizances ſo taken, then the parties are called and the cauſe of binding to the peace examined, and both parties being heard, the whole bench is to determine as they ſee cauſe, either to continue the party ſo bound, or elſe to diſcharge him.

Attachments for ſurety of the peace.

Recognizance of the peace delivered by the juſtices at their ſeſſions.

Quarter ſeſſions held by the juſtices of the peace.

The juſtices of peace in their ſeſſions are attended by the conſtables and bailiffs of all hundreds and liberties within the county, and by the ſheriff or his deputy, to be employed as occaſion ſhall ſerve in executing the precepts and directions of the court. They proceed in this ſort: The ſheriff doth ſummon twenty-four freeholders, diſcreet men of the ſaid county, whereof ſome ſixteen are ſelected and ſworn, and have their charge to ſerve as the grand jury; the party indicted is to traverſe the indictment, or elſe to confeſs it, and ſo ſubmit himſelf to be fined as the court ſhall think meet (regard had to the offence) except the puniſhment be certainly appointed (as often it is) by ſpecial ſtatutes.

The authority of juſtices of the peace out of their ſeſſions.

The juſtices of peace are many in every county, and to them are brought all traitors, felons, and other malefactors of any ſort upon their firſt apprehenſion; and that juſtice to whom they are brought examineth them, and heareth their accuſations, but judgeth not upon it; only if he find the ſuſpicion but light, then he taketh bond with ſureties of the accuſed to appear either at the next aſſizes, if it be a matter of treaſon or felony; or elſe at the quarter ſeſſions, if it be concerning riot or miſbehaviour, or ſome other ſmall offence. And he alſo then bindeth to appear thoſe that give teſtimony and proſecute the accuſation, all the accuſers and witneſſes, and ſo ſetteth the party at large. And at the aſſizes or ſeſſions (as the caſe falleth out) he certifieth the recognizances taken of the accuſed, accuſers, and witneſſes, who being there are called, and appearing, the cauſe of the accuſed is debated according to law for his clearing or condemning.

But if the party accuſed ſeem, upon pregnant matter in the accuſation, and to the juſtice, to be guilty, and the offence heinous, or the offender taken with

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the *mainour*, then the juſtice is to commit the party by his warrant, called a *mittimus*, to the gaoler of the common gaol of the county, there to remain until the aſſizes. And then the juſtice is to certify his accuſation, examination, and recognizance taken for the appearances and proſecution of the witneſſes, ſo as the judges may, when they come, readily proceed with him as the law requireth.

Judges of aſſize in place of the ancient judges in eyre Temp. R. II.

The judges of the aſſizes as they be now came into the place of the ancient juſtices in eyre, called *juſticiarii itinerantes*, which in the prime kings after the conqueſt, until H. III.'s time eſpecially, and after in leſſer meaſure even to R. II's time, did execute the juſtice of the realm; they began in this ſort.

King's-bench, marſhal's court, county-court, ſheriff's turns, hundreds, leets, and law-days, dealt only in crown matters; juſtices in eyre dealt in private titles of lands or goods, and in all treaſons and felonies, which the county courts meddled not in.

The King, not able to diſpatch buſineſs in his own perſon, erected the court of King's bench. That not able to receive all, nor meet to draw the people all to one place, there were ordained counties, and the ſheriffs Turns, hundred courts, and particular leets, and law-days, as before mentioned, which dealt only with crown matters for the publick; but not the private titles of lands, or goods, nor the trial of grand offences of treaſons and felonies. All the counties of the realm were divided into ſix circuits: and two learned men, well read in the laws of the realm, were aſſigned by the King's commiſſion to every circuit, and to ride twice a year through thoſe ſhires allotted to that circuit, making proclamation beforehand, a convenient time, in every county, of the time of their coming, and place of their ſitting, to the end the people might attend them in every county of that court.

They were to ſtay three or four days in every county, and in that time all the cauſes of that county were brought before them by the parties grieved, and all the priſoners of every gaol in the ſaid ſhire, and whatſoever controverſies ariſing concerning life, lands, or goods.

The authority of theſe judges in eyre is in part tranſlated by act of parliament to juſtices of aſſize, which be now the judges of circuits, and they to uſe the ſame courſe that juſtices in eyre did, to proclaim their coming every half year, and the place of their ſitting.

The authority of judges in eyre, tranſlated to juſtices of aſſize.

Juſtices of aſſize much leſſened by the court of common-pleas, erected in H. III.'s time.

The buſineſs of the juſtices in eyre, and of the juſtices of aſſize at this day is much leſſened, for that in H. III.'s time there was erected the court of common-pleas at Weſtminſter, in which court have been ever ſince, and yet are, begun and handled the great ſuits of lands, debts, benefices, and contracts, fines for aſſurance of lands and recoveries, which were wont to be either in the King's bench, or elſe before the juſtices in eyre. But the ſtatute of *Mag. Chart. cap.* 11. is negative againſt it, viz. *Communia placita non ſequantur curiam noſtram, ſed teneantur in aliquo loco certo*; which *locus certus* muſt be the common-pleas; yet the judges of circuits have now five commiſſions by which they ſit.

Juſtices of aſſize ſit by five commiſſions.

Oyer and terminer, in which the judges are of the *Quorum*.

The firſt is a commiſſion of oyer and terminer, directed unto them, and many others of the beſt account, in their circuits: but in this commiſſion the judges of aſſize are of the *Quorum*, ſo as without them there can be no proceeding.

This commiſſion giveth them power to deal with treaſons, murders, and all manner of felonies and miſdemeanors whatſoever; and this is the largeſt commiſſion that they have.

Gaolelivery directed only to the judges and clerk of the aſſize.

The ſecond is a commiſſion of gaol-delivery, that is only to the judges themſelves, and the clerk of the aſſize aſſociate: and by this commiſſion they are to deal with every priſoner in the gaol, for what offence ſoever he be there, and to proceed with him according to the laws of the realm, and the quality of his offence; and they cannot by this commiſſion do any thing concerning any man, but thoſe that are priſoners in the gaol. The courſe now in uſe of execution of this commiſſion of gaol-delivery, is this. There is no priſoner but is committed by ſome juſtice of peace, who before he committed him took his examination, and bound his accuſers and witneſſes to appear and proſecute at the gaol-delivery. This juſtice doth certify theſe examinations and bonds, and thereupon the accuſer is called ſolemnly into the court, and when he appeareth, he is willed to prepare a bill of indictment againſt the priſoner, and go with it to the grand jury, and give evidence upon their oaths, he and the witneſſes; which he doth: and then the grand jury write thereupon either *billa vera*, and

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then the priſoner ſtandeth indicted; or elſe *ignoramus*, and then he is not touched. The grand jury deliver theſe bills to the judges in their court, and ſo many as they find indorſed *billa vera*, they ſend for thoſe priſoners; then is every man's indictment put and read to him, and they aſk him, whether he be guilty or not: if he ſaith, Guilty, his confeſſion is recorded; if he ſay, Not guilty, then he is aſked how he will be tried; he anſwereth, By the country. Then the ſheriff is commanded to return the names of twelve freeholders to the court, which freeholders be ſworn to make true delivery between the King and the priſoner; and then the indictment is again read, and the witneſſes ſworn to ſpeak their knowledge concerning the fact, and the priſoner is heard at large what defence he can make, and then the jury go together and conſult. And after a while they come in with a verdict of Guilty or Not guilty, which verdict the judges do record accordingly. If any priſoner plead Not guilty upon the indictment, and yet will not put himſelf to trial upon the jury (or ſtand mute) he ſhall be preſſed.

The manner of the proceedings of the juſtices of circuits.

Of the judges for the gaol-delivery.

The judges, when many priſoners are in the gaol, do in the end, before they go, peruſe every one. Thoſe that were indicted by the grand jury, and found Not guilty by the ſelect jury, they judge to be quitted, and ſo deliver them out of the gaol. Thoſe that are found Guilty by both juries, they judge to death, and command the ſheriff to ſee execution done. Thoſe that refuſe trial by the country, or ſtand mute upon the indictment, they judge to be preſſed to death. Some whoſe offences are pilfering under twelve pence value, they judge to be whipped. Thoſe that confeſs their indictments, they judge to death, whipping, or otherwiſe, as their offence requireth. And thoſe that are not indicted at all, but their bill of indictment returned with *ignoramus* by the grand jury, and all others in the gaol, againſt whom no bills at all are preferred, they do acquit by proclamation out of the gaol; that one way or other they rid the gaol of all the priſoners in it. But becauſe ſome priſoners have their books, and be burned in the hand, and ſo delivered, it is neceſſary to ſhew the reaſon thereof. This having their books is called their clergy, which in ancient time began thus.

Books allowed clergy, *etc.*

For the ſcarcity of the clergy in the realm of England, to be diſpoſed in religious houſes, or for prieſts, deacons, and clerks of pariſhes, there was a prerogative allowed to the clergy, that if any man that could read as a clerk were to be condemned to death, the biſhop of the dioceſe might, if he would, claim him as a clerk, and he was to ſee him tried in the face of the court whether he could read or not. The book was prepared and brought by the biſhop, and the judge was to turn to ſome place as he ſhould think meet; and if the priſoner could read, then the biſhop was to have him delivered over unto him, to diſpoſe of in ſome places of the clergy as he ſhould think meet: but if either the biſhop would not demand him, or that the priſoner could not read, then was he to be put to death.

Clergy allowed anciently in all offences, except treaſon and robbing of churches; now taken away, 1. In murder. 2. In burglary. 3. Robbery. 4. Purſe-cutting. 5. Horſe-ſtealing, and in divers other offences. By the ſtat. of 18 E. judges are to allow clergy, and to ſee them burned in the hand, and to diſcharge the priſoners without delivering them to the biſhop.

And this clergy was allowable, in the ancient times and law, for all offences, whatſoever they were, except treaſon, and the robbing of churches of their goods and ornaments. But by many ſtatutes made ſince, the clergy is taken away for murder, burglary, robbery, purſe-cutting, horſe-ſtealing, and divers other felonies, particularized by the ſtatutes to the judges; and laſtly, by a ſtatute made 18 Elizabeth, the judges themſelves are appointed to allow clergy to ſuch as can read, being not ſuch offenders from whom clergy is taken away by any ſtatute, and to ſee them burned in the hand, and ſo diſcharge them, without delivering them to the biſhop; howbeit, the biſhop appointeth the deputy to attend the judges with a book, to try whether they can read or not.

The third commiſſion that the judges of circuits have, is a commiſſion directed to themſelves only, and the clerk of aſſize, to take aſſizes, by which they are called juſtices of aſſize; and the office of thoſe juſtices is to do right upon writs called aſſizes, brought before them by ſuch as are wrongfully thruſt out of their lands. Of which number of writs there was far greater ſtore brought before them in ancient times than now; for that mens ſeiſins and poſſeſſions are ſooner recovered by ſealing leaſes upon the ground, and by bringing an *ejectione firmae*, and trying their title ſo, than by the long ſuits of aſſizes.

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The fourth commiſſion is a commiſſion to take *Niſi prius* directed to none but to the judges themſelves, and their clerks of aſſizes, by which they are called juſtices of *Niſi prius*. Theſe *Niſi prius* happen in this ſort; when a ſuit is begun for any matter in one of the three courts, the King's bench, common-pleas, or the exchequer here above, and the parties in their pleadings do vary in a point of fact; as for example, if in an action of debt upon obligation the defendant denies the obligation to be his debt; or in any action of treſpaſs grown for taking away goods, the defendant denieth that he took them; or in action of the caſe for ſlanderous words, the defendant denieth that he ſpake them, *etc.* Then the plaintiff is to maintain and prove that the obligation is the defendant's deed, that he either took the goods, or ſpake the words; upon which denial and affirmation the law ſaith, that iſſue is joined betwixt them, which iſſue of the fact is to be tried by a jury of twelve men of the county, where it is ſuppoſed by the plaintiff to be done, and for that purpoſe the judges of the court do award a writ of *Venire facias* in the King's name to the ſheriff of that county, commanding him to cauſe four and twenty diſcreet freeholders of his county, at a certain day, to try this iſſue ſo joined; out of which four and twenty only twelve are choſen to ſerve. And that double number is returned, becauſe ſome may make default, and ſome be challenged upon kindred, alliance, or partial dealing.

4. Commiſſion to take *Niſi prius*, directed to two judges, and the clerk of the aſſize. *Niſi Prius.*

Theſe four and twenty the ſheriff doth name and certify to the court, and withal, that he hath warned them to come at the day according to their writ. But becauſe at the firſt ſummons there falleth no puniſhment upon the four and twenty if they come not, they very ſeldom or never appear upon the firſt writ; and upon their default there is another writ * returned to the ſheriff, commanding him to diſtrain them by their lands to appear at a certain day appointed by the writ, which is the next term after, *Niſi prius juſticiarii noſtri ad aſſiſas capiendas venerint, etc.* of which words the writ is called a *Niſi prius*, and the judges of the circuit of that county in that vacation, and mean time, before the day of appearance appointed for the jury above, here by their commiſſion of *Niſi prius*, have authority to take the appearance of the jury in the county before them, and there to hear the witneſſes and proofs on both ſides, concerning the iſſue of fact, and to take the verdict of the jury, and againſt the day they ſhould have appeared above, to return the verdict read in the court above, which return is called a *Poſtea*.

* *Diſtringas.* The manner of proceeding of juſtices of circuits. The courſe the judges hold in the taking of *Niſi prius.*

Poſtea.

And upon this verdict, clearing the matter in fact, one way or other, the judges above give judgment for the party for whom the verdict is found, and for ſuch damages and coſts as the jury do aſſeſs.

By thoſe trials called *Niſi prius*, the juries and the parties are eaſed much of the charge they ſhould be put to, by coming to London with their evidences and witneſſes; and the courts of Weſtminſter are eaſed of much trouble they ſhould have, if all the juries for trials ſhould appear and try their cauſes in thoſe courts; for thoſe courts above have little leiſure now. Though the juries come not up, yet in matters of great weight, or where the title is intricate or difficult, the judges above, upon information to them, do retain thoſe cauſes to be tried there, and the juries do at this day, in ſuch cauſes, come to the bar at Weſtminſter.

The fifth commiſſion that the judges in their circuits do ſit by, is the commiſſion of the peace in every county of their circuit. And all the juſtices of the peace, having no lawful impediment, are bound to be preſent at the aſſizes to attend the judges, as occaſion ſhall fall out: if any make default, the judges may ſet a fine upon him at their pleaſure and diſcretions. Alſo the ſheriff in every ſhire through the circuit, is to attend in perſon, or by a ſufficient deputy allowed by the judges, all that time they be within the county, and the judges may fine him if he fail, or for negligence or miſbehaviour in his office before them; and the judges above may alſo fine the ſheriff, for not returning, or not ſufficient returning of writs before them.

5. Commiſſion is a commiſſion of the peace. The juſtices of the peace and the ſheriff are to attend the judges in their county.

Property in lands, how gotten or transferred.

I. By entry.
II. By deſcent.
III. By eſcheat.
IV. Moſt uſually by conveyance.

Of the property of lands to be gained by entry.

I. PROPERTY by entry is, where a man findeth a piece of land that no other poſſeſſeth, or hath title unto, and he that ſo findeth it doth enter, this entry gaineth a property. This law ſeemeth to be derived from this text, *Terram dedit filiis hominum*, which is to be underſtood, to thoſe that will till and manure it, and ſo make it yield fruit: and that is he that entereth into it, where no man had it before. But this manner of gaining lands was in the firſt days, and is not now of uſe in England, for that by the conqueſt all the land of this nation was in the Conqueror's hands, and appropriated unto him; except religious and church lands, and the lands in Kent, which by compoſition were left to the former owners, as the Conqueror found them; ſo that none but the biſhopricks, churches, and the men of Kent, can at this day make any greater title than from the conqueſt, to any lands in England. And lands poſſeſſed without any ſuch title, are in the crown, and not in him that firſt entereth; as it is in land left by the ſea; this land belongeth to the King, and not to him that hath the lands next adjoining, which was the ancient ſea banks. This is to be underſtood of the inheritance of lands, viz. that the inheritance cannot be gained by the firſt entry. But an eſtate for another man's life by occupancy, may at this day be gotten by entry. As a man called A. having land conveyed unto him for the life of B. dieth without making any eſtate of it, there, whoſoever firſt entereth into the land after the deceaſe of A. getteth the property in the land for time of the continuance of the eſtate which was granted to A. for the life of B. which B. yet liveth, and therefore the ſaid land cannot revert till B. die. And to the heir of A. it cannot go, for that it is not any eſtate of inheritance, but only an eſtate for another man's life; which is not deſcendable to the heir, except he be ſpecially named in the grant, viz. to him and his heirs. As for the executors of A. they cannot have it, for it is not an eſtate teſtamentary, that it ſhould go to the executors as goods and chattels ſhould, ſo as in truth no man can entitle himſelf unto thoſe lands; and therefore the law preferreth him that firſt entreth, and he is called *occupans*, and ſhall hold it during the life of B. but muſt pay the rent, perform the conditions, and do no waſte: and he may by deed aſſign it to whom he pleaſe in his life-time. But if he die before he aſſign it over, then it ſhall go again to whomſoever firſt entreth and holdeth; and ſo all the life of B. ſo often as it ſhall happen.

All lands in England were the Conqueror's, and held of him, except, 1. Religious and church-lands. 2. The lands of the men of Kent. Land left by the ſea belongeth to the King.

Occupancy.

Likewiſe, if any man doth wrongfully enter into another man's poſſeſſion, and put the right owner of the freehold and inheritance from it, he thereby getteth the freehold and inheritance by diſſeiſin, and may hold it againſt all men, but him that hath right, and his heirs, and is called a diſſeiſor. Or if any one die ſeiſed of lands, and before his heir doth enter, one that hath no right doth enter into the lands, and holdeth them from the right heir, he is called an abator, and is lawful owner againſt all men but the right heir.

And if ſuch perſon abator or diſſeiſor (ſo as the diſſeiſor hath quiet poſſeſſion five years next after the diſſeiſin) do continue their poſſeſſion, and die ſeiſed, and the land deſcend to his heir, they have gained the right to the poſſeſſion of the land againſt him that hath right, till he recover it by fit action real at the common law. And if it be not ſued for at the common law, within threeſcore years after the diſſeiſin, or abatement committed, the right owner hath loſt his right by that negligence. And if a man hath divers children, and the elder, being a baſtard, doth enter into the land, and enjoyeth it quietly during his life, and dieth thereof ſo ſeiſed, his heirs ſhall hold the land againſt all the lawful children, and their iſſues.

II. PROPERTY

II. PROPERTY of lands by deſcent is, where a man hath lands of inheritance and dieth, not diſpoſing of them, but leaving it to go (as the law caſteth it) upon the heir. This is called a deſcent in law, and upon whom the deſcent is to light, is the queſtion. For which purpoſe, the law of inheritance preferreth the firſt child before all others, and amongſt children the male before the female; and amongſt males the firſt born. If there be no children, then the brother; if no brother, then ſiſters; if neither brothers nor ſiſters, then uncles, and for lack of uncles, aunts; if none of them, then couſins in the neareſt degree of conſanguinity, with theſe three rules of diverſities. 1. That the eldeſt male ſhall ſolely inherit; but if it come to females, then they being all in an equal degree of nearneſs ſhall inherit all together, and are called parceners, and all they make but one heir to the anceſtor. 2. That no brother or ſiſter of the half blood ſhall inherit to his brother or ſiſter, but as a child to his parents: as for example, if a man have two wives, and by either wife a ſon, the eldeſt ſon over-living his father, is to be preferred to the inheritance of the father, being fee-ſimple; but if he entreth and dieth without a child, the brother ſhall not be his heir, becauſe he is of the half blood to him, but the uncle of the eldeſt brother or ſiſter of the whole blood: yet if the eldeſt brother had died, or had not entered in the life of the father, either by ſuch entry or conveyance, then the youngeſt brother ſhould inherit the land that the father had, although it were a child by the ſecond wife, before any daughter by the firſt. The third rule about deſcents: That land purchaſed ſo by the party himſelf that dieth, is to be inherited; firſt, by the heirs of the father's ſide, then if he have none of that part, by the heirs of the mother's ſide. But lands deſcended to him from his father or mother, are to go to that ſide only from which they came, and not to the other ſide.

Property of lands by deſcent.

Of deſcent: three rules.

Brother or ſiſter of the half blood ſhall not inherit to his brother or ſiſter, but only as a child to his parents.

Deſcent.

Thoſe rules of deſcent mentioned before are to be underſtood of fee-ſimples, and not of entailed lands, and thoſe rules are reſtrained by ſome particular cuſtoms of ſome particular places: as namely, the cuſtoms of Kent, that every male of equal degree of childhood, brotherhood, or kindred, ſhall inherit equally (as daughters ſhall being parceners;) and in many borough towns of England, the cuſtom alloweth the youngeſt ſon to inherit, and ſo the youngeſt daughter. The cuſtom of Kent, is called Gavelkind. The cuſtom of boroughs, Burgh-Engliſh.

Cuſtoms of certain places.

And there is another note to be obſerved in fee-ſimple inheritance, and that is, that every heir having fee-ſimple land or inheritance, be it by common law or by cuſtom, of either Gavelkind or Burgh-Engliſh, is chargeable, ſo far forth as the value thereof extendeth, with the binding acts of the anceſtors from whom the inheritance deſcendeth; and theſe acts are collateral incumbrances, and the reaſon of this charge is, *Qui ſentit commodum, ſentire debet et incommodum ſive onus.* As for example, if a man bind himſelf and his heirs in an obligation, or do covenant by writing for him and his heirs, or do grant an annuity for him and his heirs, or do make a warranty of land, binding him and his heirs to warranty: in all theſe caſes the law chargeth the heir after the death of the anceſtor with this obligation, covenant, annuity, and warranty; yet with theſe three cautions: firſt, that the party muſt by ſpecial name bind himſelf and his heirs, or covenant, grant, and warrant for himſelf and his heirs; otherwiſe the heir is not to be touched. Secondly, that ſome action muſt be brought againſt the heir, whilſt the land or other inheritance reſteth in him unaliened away: for if the anceſtor die, and the heir, before an action be brought againſt him upon thoſe bonds, covenants, or warranties, do alien away the land, then the heir is clean diſcharged of the burthen; except the land was by fraud conveyed away of purpoſe to prevent the ſuit intended againſt him. Thirdly, that no heir is farther to be charged than the value of the land deſcended unto him from the ſame anceſtor that made the inſtrument of charge, and that land alſo, not to be ſold out-right for the debt, but to be kept in extent, and at a yearly value, until the debt or damage be run out. Nevertheleſs, if an heir that is ſued upon ſuch a debt of his anceſtor do not deal clearly with the court when he is ſued,

Every heir having land is bound by the binding acts of his anceſtors, if he be named.

Dyer 114. Plowd.

Dyer 149. Plowd.

Day and Pepp's caſe

Heir charged for his falſe plea.

ſued, that is, if he come not in immediately, and by way of confeſſion ſet down the true quantity of his inheritance deſcended, and ſo ſubmit himſelf therefore, as the law requireth, then that heir that otherwiſe demeaneth himſelf, ſhall be charged of his own lands or goods, and of his money, for this deed of his anceſtor. As for example; if a man bind himſelf and his heirs in an obligation of one hundred pounds, and dieth leaving but ten acres of land to his heir, if his heir be ſued upon the bond, and cometh in, and denieth that he hath any lands by deſcent, and it is found againſt him by the verdict that he hath ten acres; this heir ſhall be now charged by his falſe plea of his own lands, goods, and body, to pay the hundred pound, although the ten acres be not worth ten pound.

Property of lands by eſcheat. Two cauſes of eſcheat. 1. Baſtardy. 2. Attainder of treaſon, felony. Attainder of treaſon entitleth the King, though lands be not holden of him: otherwiſe in attainder of felony, *etc.* for there the King ſhall have but *annum, diem et waſtum.* In eſcheats, 1. The tenure. 2. The manner of the attainder.

III. PROPERTY of lands by eſcheat, is where the owner died ſeiſed of the lands in poſſeſſion without child or other heir, thereby the land, for lack of other heir, is ſaid to eſcheat to the lord of whom it is holden. This lack of heir happeneth principally in two caſes: Firſt, where the land's owner is a baſtard. Secondly, where he is attainted of felony or treaſon. For neither can a baſtard have any heir, except it be his own child, nor a man attainted of treaſon, although it be his own child.

Upon attainder of treaſon the King is to have the land, although he be not the lord of whom it is held, becauſe it is a royal eſcheat. But for felony it is not ſo, for there the King is not to have the eſcheat, except the land be holden of him: and yet where the land is not holden of him, the King is to have the land for a year and a day next enſuing the judgment of the attainder, with a liberty to commit all manner of waſte all that year in houſes, gardens, ponds, lands, and woods.

In theſe eſcheats two things are eſpecially to be obſerved; the one is, the tenure of the lands, becauſe it directeth the perſon to whom the eſcheat belongeth, viz. the lord of the manor of whom the land is holden. 2. The manner of ſuch attainder which draweth with it the eſcheat. Concerning the tenure of lands, it is to be underſtood, that all lands are holden of the crown either mediately or immediately, and that the eſcheat appertaineth to the immediate lord, and not to the mediate. The reaſon why all land is holden of the crown immediately, or by meſne lords, is this.

*The Conqueror got all the lands of the realm into his hands, and reſerved rents and ſervices. Knight's ſervice *in capite* firſt inſtituted. The reſervations in knight's ſervice. 1. Marriage of the wards. 2. Horſe for ſervice. 3. Homage and fealty. 4. Primer ſeiſin.

The * Conqueror got by right of conqueſt all the land of the realm into his own hands in demeſne, taking from every man all eſtate, tenure, property, and liberty of the ſame (except religious and church lands, and the land in Kent:) and ſtill as he gave any of it out of his own hand, he reſerved ſome retribution of rents, or ſervices, or both, to him and to his heirs; which reſervation is that which is called the tenure of land.

In which reſervation he had four inſtitutions, exceeding politick and ſuitable to the ſtate of a conqueror.

Firſt, Seeing his people to be part Normans, and part Saxons, the Normans he brought with him, the Saxons he found here; he bent himſelf to conjoin them by marriages in amity, and for that purpoſe ordained, that if thoſe of his nobles, knights, and gentlemen, to whom he gave great rewards of lands, ſhould die, leaving their heir within age, a male within twenty-one, and a female within fourteen years, and unmarried, then the King ſhould have the beſtowing of ſuch heirs in marriage in ſuch a family, and to ſuch perſons as he ſhould think meet; which intereſt of marriage went ſtill implied, and doth at this day in every tenure called knight's ſervice.

The policy of the Conqueror in the reſervation of ſervices. Reſervation that his tenant ſhould keep a horſe of ſervice, and ſerve upon him himſelf when the King went to war.

The ſecond was, to the end that his people ſhould ſtill be conſerved in warlike exerciſes and able for his defence. When therefore he gave any good portion of lands, that might make the party of abilities or ſtrength, he withal reſerved this ſervice, that that party and his heirs having ſuch lands, ſhould keep a horſe of ſervice continually, and ſerve upon him himſelf when the King went to wars; or elſe, having impediment to excuſe his own perſon, ſhould find another to ſerve in his place: which ſervice of horſe and man is a part of that tenure called knight's ſervice at this day.

But

But if the tenant himſelf be an infant, the King is to hold this land himſelf until he come to full age, finding him meat, drink, apparel, and other neceſſaries, and finding a horſe and a man with the overplus, to ſerve in the wars, as the tenant himſelf ſhould do if he were at full age.

But if this inheritance deſcend upon a woman that cannot ſerve by her ſex, then the King is not to have the lands, ſhe being of fourteen years of age, becauſe ſhe is then able to have a huſband that may do the ſervice in perſon.

3. Inſtitution of the Conqueror was, that his tenants by knight's ſervice vow, 1. Homage. 2. Fealty.

* The third inſtitution was, that upon every gift of land the King reſerved a vow and an oath to bind the party to his faith and loyalty: that vow was called homage, the oath fealty. Homage is to be done kneeling, holding his hands between the knees of the lord, ſaying in the French tongue, I become your man of life and limb, and of earthly honour. Fealty is to take an oath upon a book, that he will be a faithful tenant to the King, and do his ſervice, and pay his rents according to his tenure.

4 Inſtitution was for recognition of the King's bounty, every heir to pay one year's profit of the lands called *primer ſeiſin*.

† The fourth inſtitution was, that for recognition of the King's bounty by every heir ſucceeding his anceſtor in thoſe knight's ſervice lands, the King ſhould have *primer ſeiſin* of the lands, which is one year's profit of the lands; and until this be paid, the King is to have poſſeſſion of the land, and then to reſtore it to the heir; which continueth at this day in uſe, and is the very cauſe of ſuing livery, and that as well where the heir hath been in ward, as otherwiſe.

Knight's ſervice *in capite* is a tenure *de perſona regis*.

Theſe before-mentioned be the rights of the tenure, called knight's ſervice *in capite*, which is as much to ſay, as tenure *de perſona regis*; and *caput* being the chiefeſt part of the perſon, it is called a tenure *in capite*, or in chief. And it is alſo to be noted, that as this tenure *in capite* by knight's ſervice generally was a great ſafety to the crown, ſo alſo the Conqueror inſtituted other tenures *in capite* neceſſary to his eſtate; as namely, he gave divers lands to be holden of him by ſome ſpecial ſervice about his perſon, or by bearing ſome ſpecial office in his houſe, or in the field, which have knight's ſervice and more in them, and theſe be called tenures by grand ſerjeanty. Alſo he provided upon the firſt gift of lands, to have revenues by continual ſervice of ploughing his land, repairing his houſes, parks, pales, caſtles, and the like. And ſometimes to a yearly proviſion of gloves, ſpurs, hawks, horſes, hounds, and the like; which kind of reſervations are called alſo tenures in chief, or *in capite* of the King, but they are not by knight's ſervice, becauſe they required no perſonal ſervice, but ſuch things as the tenant may hire another to do, or provide for his money. And this tenure is called a tenure by ſocage *in capite*, the word *ſoca* ſignifying the plough; howbeit in this latter time, the ſervice of ploughing the land, and of harveſt works, is turned into money-rent, for that the Kings do not keep their demeſne in their own hands, as they were wont to do; yet what lands were *de antiquo dominio coronae*, it well appeareth in the records of the exchequer called the book of *Doomſday*. And the tenants in ancient demeſne have many immunities and privileges at this day, that in ancient times were granted unto thoſe tenants by the crown; the particulars whereof are too long to ſet down.

Grand ſerjeanty.
Petty ſerjeanty.
The inſtitution of ſocage *in capite*, and that it is now turned into money-rent.

Theſe tenures *in capite*, as well that by *ſocage*, as the others by knight's ſervice, have this property; that the tenants cannot alien their lands without licence of the King: if they do, the King is to have a fine for the contempt, and may ſeize the land, and retain it until the fine be paid. And the reaſon is, becauſe the King would have a liberty in the choice of his tenant, ſo that no man ſhould preſume to enter into thoſe lands, and hold them (for which the King was to have thoſe ſpecial ſervices done him) without the King's leave; this licence and fine, as it is now digeſted, is eaſy and of courſe.

* Aid money to make the King's eldeſt ſon a knight, or to marry his eldeſt daughter, is likewiſe due to his Majeſty from every one of his tenants in knight's ſervice, that hold by a whole fee 20 s. and from every tenant in ſocage, if his land be worth twenty pound *per ann.* 20 s.

† Eſcuage was likewiſe due unto the King from his tenant by knight's ſervice: when his Majeſty made a voyage royal to war againſt another nation, thoſe of his tenants that did not attend him there for forty days with horſe and furniture fit for ſervice, were to be aſſeſſed in a certain ſum by act of parliament, to be paid unto his Majeſty; which aſſeſſment is called eſcuage.

Office of alienation. A licence of alienation is the third part of one year's value of the land moderately rated. Aid, what. Tenants by knight's service *in capite* paid it to make the King's eldeſt ſon a knight, or to marry his eldeſt daughter. Tenants by ſocage *in capite*. How manors were at firſt created. Manors created by great men in imitation of the King in the inſtitutions of tenures. *A manere*, the word manor. Knight's ſervice tenure reſerved to common perſons. Relief is 5 l. to be paid by every tenant by knight's ſervice to his lord, *etc.* Socage tenure reſerved by the lord.

There is an office called the office of alienation, where any man may have a licence at a reaſonable rate, that is, at the third part of one year's value of the land moderately rated. A tenant *in capite* by knight's ſervice or grand ſerjeanty, was reſtrained by ancient ſtatute, that he ſhould not give nor alien away more of his lands, than that with the reſt he might be able to do the ſervice due to the King; and this is now out of uſe.

And to this tenure by knight's ſervice in chief was incident, that the King ſhould have a certain ſum of money called *aid*, due, to be ratably levied amongſt all thoſe tenants proportionably to their lands, to make his eldeſt ſon a knight, or to marry his eldeſt daughter.

And it is to be noted, that all thoſe that hold lands by the tenure of ſocage *in capite* (although not by knight's ſervice) cannot alien without licence, and they are to ſue livery, and pay *primer ſeiſin*, but not to be in ward for body or land.

By example and reſemblance of the King's policy in theſe inſtitutions of tenures, the great men and gentlemen of this realm did the like ſo near as they could; as for example, when the King had given to any of them two thouſand acres of land, this party purpoſing in this place to make a dwelling, or (as the old word is) his manſion-houſe, or his manor-houſe, did deviſe how he might make his land a complete habitation to ſupply him with all manner of neceſſaries; and for that purpoſe, he would give of the uttermoſt parts of thoſe two thouſand acres, 100 or 200 acres, or more or leſs, as he ſhould think meet, to one of his moſt truſty ſervants, with ſome reſervation of rent, to find a horſe for the wars, and go with him when he went with the King to the wars, adding vow of homage, and the * oath of fealty, wardſhip, marriage, and relief. This relief is to pay five pound for every knight's fee, or after that rate for more or leſs at the entrance of every heir; which tenant ſo created, and placed, was and is to this day called a tenant by knight's ſervice, and not by his own perſon, but of his manors; of theſe he might make as many as he would. Then this lord would provide that the land which he was to keep for his own uſe, ſhould be ploughed, and his harveſt brought home, his houſe repaired, his park paled, and the like: and for that end he would give ſome leſſer parcels to ſundry others, of twenty, thirty, forty, or fifty acres: reſerving the ſervice of ploughing a certain quantity, or ſo many days, of his land, and certain harveſt works or days in the harveſt to labour, or to repair the houſe, park pale, or otherwiſe, or to give him for his proviſion, capons, hens, pepper, cummin, roſes, gilliflowers, ſpurs, gloves, or the like: or to pay to him a certain rent, and to be ſworn to be his faithful tenant, which tenure was called a ſocage tenure, and is ſo to this day; howbeit moſt of the ploughing and harveſt ſervice are turned into money rents.

Relief of tenant in ſocage, one year's rent and no wardſhip, or other profit upon the dying of the tenant.

† The tenants in ſocage at the death of every tenant were to pay relief, which was not as knight's ſervice is, five pound a knight's fee: but it was, and ſo is ſtill, one year's rent of the land; and no wardſhip or other profit to the lord. The remainder of the two thouſand acres he kept to himſelf, which he uſed to manure by his bondmen, and appointed them at the courts of his manor how they ſhould hold it, making an entry of it into the roll of the remembrances of the acts of his court, yet ſtill in the lord's power to take it away; and therefore they were called tenants at will, by copy of court-roll; being in truth bond-men at the beginning: but having obtained freedom of their perſons, and gained a cuſtom by uſe of occupying their lands, they now are called copyholders, and are ſo privileged, that the lord cannot put them out, and all through cuſtom. Some copyholders are for lives, one, two, or three ſucceſſively; and ſome inheritances from heir to heir by cuſtom; and cuſtom ruleth theſe eſtates wholly, both for widows eſtates, fines, herriots, forfeitures, and all other things.

Villenage or tenure by copy of court-roll.

Manors being in this ſort made at the firſt, reaſon was that the lord of the manor ſhould hold a court, which is no more than to aſſemble his tenants together at a time by him to be appointed; in which court he was to be informed by oath

Court baron, with the uſe of it.

* Knight's ſervice tenure created by the lord, is not a tenure by knight's ſervice of the perſon of the lord, but of his manor.

† All money and eſcuage money is likewiſe due unto the lords of their tenants.

of

of his tenants, of all ſuch duties, rents, reliefs, wardſhips, copy-holds, or the like, that had happened unto him; which information is called a preſentment, and then his bailiff was to ſeiſe and diſtrain for thoſe duties if they were denied or with-holden, which is called a court baron: and herein a man may ſue for any debt or treſpaſs under forty ſhillings value, and the freeholders are to judge of the cauſe upon proof produced upon both ſides. And therefore the freeholders of theſe manors, as incident to their tenures, do hold by ſuit of court, which is to come to the court, and there to judge between party and party in thoſe petty actions; and alſo to inform the lord of duties, rents, and ſervices unpaid to him from his tenants. By this courſe it is diſcerned who be the lords of lands, ſuch as if the tenants die without heir, or be attainted of felony or treaſon, ſhall have the land by eſcheat.

Suit to the court of the lord incident to the tenure of the freeholders.

Now concerning what attainders ſhall give the eſcheat to the lord; it is to be noted, that it muſt either be by judgment of death given in ſome court of record againſt the felon found guilty by verdict, or confeſſion of the felony, or it muſt be by out-lawry of him.

What attainders ſhall give the eſcheat to the lord. Attainders, 1. By judgment. 2. By verdict or confeſſion. 3. By outlawry, give the lands to the lord.

The out-lawry groweth in this ſort; a man is indicted for felony, being not in hold, ſo as he cannot be brought in perſon to appear and to be tried, inſomuch that proceſs of *capias* is therefore awarded to the ſheriff, who not finding him, returneth, *non eſt inventus in balliva mea*; and thereupon another *capias* is awarded to the ſheriff; who likewiſe not finding him maketh the ſame return: then a writ called an *exigent* is directed to the ſheriff, commanding him to proclaim him in his county-court five ſeveral court days, to yield his body; which if the ſheriff do, and the party yield not his body, he is ſaid, by the default, to be out-lawed, the coroners there adjudging him outlawed, and the ſheriff making the return of the proclamations, and of the judgment of the coroners upon the backſide of the writ. This is an attainder of felony, whereupon the offender doth forfeit his lands by an eſcheat to the lord of whom they are holden.

Of an attainder by outlawry.

But note, that a man found guilty of felony by verdict or confeſſion, and praying his clergy, and thereupon reading as a clerk, and ſo burnt in the hand and diſcharged, is not attainted; becauſe he by his clergy preventeth the judgment of death, and is called a clerk convict, who loſeth not his lands, but all his goods, chattels, leaſes, and debts.

Prayer of the clergy.

So a man indicted, that will not anſwer nor put himſelf upon trial, although he be by this to have judgment of preſſing to death, yet he doth forfeit no lands, but goods, chattels, leaſes, and debts, except his offence be treaſon, and then he forfeiteth his lands to the crown.

He that ſtandeth mute forfeiteth no lands, except for treaſon.

So a man that killeth himſelf ſhall not loſe his lands, but his goods, chattels, leaſes, and debts. So of thoſe that kill others in their own defence, or by misfortune.

He that killeth himſelf forfeiteth but his chattels.

A man that being purſued for felony, and flieth for it, loſes his goods for his flying, although he return and is tried, and found not guilty of the fact.

Flying for felony, a forfeiture of goods.

So a man indicted of felony, if he yield not his body to the ſheriff until after the exigent of proclamation is awarded againſt him, this man doth forfeit all his goods for his long ſtay, although he be not found guilty of the felony; but none is attainted to loſe his lands, but only ſuch as have judgments of death by trial upon verdict, or their own confeſſion, or that they be by judgment of the coroners out-lawed, as before.

He that yieldeth his body upon the exigent for felony, forfeiteth his goods.

Beſides the eſcheats of lands to the lords of whom they be holden, for lack of heirs, and by attainder for felony (which only do hold place in fee-ſimple lands) there are alſo forfeiture of lands to the crown by attainder of treaſon; as namely, if one that hath entailed lands commit treaſon, he forfeiteth the profits of the lands for his life to the crown, but not to the lord.

Lands entailed eſcheat to the King for treaſon. Stat. 26 H. 8.

And if a man having an eſtate for life of himſelf, or of another, commit treaſon or felony, the whole eſtate is forfeited to the crown, but no eſcheat to the lord.

Tenant for life committing treaſon or felony, there ſhall be no eſcheat to the lord.

But a copy-hold, for fee-ſimple, or for life, is forfeited to the lord, and not to the crown; and if it be entailed, the lord is to have it during the life of the offender only, and then his heir is to have it.

The cuſtom of Kent is, that Gavelkind land is not forfeitable nor eſcheatable

for

for felony: for they have an old saying; The father to the bough, and the son to the plough.

The wife loseth no dower, notwithstanding the husband be attainted of felony.

If the husband was attainted, the wife was to lose her thirds in cases of felony and treason, but yet she is no offender; but at this day it is holden by statute law, that she loseth them not for the husband's felony. The relation of these forfeits are these:

Attainder in felony or treason by verdict, confession, or outlawry, forfeiteth all they had from the time of the offence committed. And so it is upon an attainder of outlawry: otherwise it is in the attainder by verdict, confession, and outlawry, as to their relation for the forfeiture of goods and chattels.

1. That men attainted of felony or treason, by verdict or confession, do forfeit all the lands they had at the time of their offence committed; and the King or the lord, whosoever of them hath the escheat or forfeiture, shall come in and avoid all leases, statutes, or conveyances done by the offender, at any time since the offence done. And so is the law clear also, if a man be attainted for treason by out-lawry: but upon attainder of felony by out-lawry, it hath been much doubted by the law-books, whether the lord's title by escheat shall relate back to the time of the offence done, or only to the date of teste of the writ of exigent for proclamation, whereupon he is out-lawed: howbeit at this day it is ruled, that it shall reach back to the time of the fact; but for goods, chattels, and debts, the King's title shall look no further back than to those goods, the party attainted by verdict or confession had at the time of the verdict and confession given or made, and in outlawries at the time of the exigent, as well in treasons as felonies: wherein it is to be observed, that upon the party's first apprehension, the King's officers are to seize all the goods and chattels, and preserve them together, dispending only so much out of them, as is fit for the sustentation of the person in prison, without any wasting, or disposing of them until conviction; and then the property of them is in the crown, and not before.

The King's officers to seize a felon's goods and chattels.

It is also to be noted, that persons attainted for felony or treason have no capacity in them to take, obtain, or purchase, save only to the use of the King, until the party be pardoned. Yet the party getteth not back his lands or goods, without a special patent of restitution, which cannot restore the blood without an act of parliament. So if a man have a son, and then is attainted of felony or treason, and pardond, and purchaseth lands, and then hath issue another son, and dieth; the son he had before he had his pardon, although he be his eldest son, and the patent have the words of restitution to his lands, shall not inherit, but his second son shall inherit them, and not the first; because the blood is corrupted by the attainder, and cannot be restored by patent alone, but by act of parliament. And if a man have two sons, and the eldest is attainted in the life of his father, and dieth without issue, the father living, the second son shall inherit the father's lands; but if the eldest son have any issue, though he die in the life of his father, then neither the second son, nor the issue of the eldest, shall inherit the father's lands, but the father shall there be accounted to die without heir; and the land shall escheat, whether the eldest son have issue or not, afterward or before, though he be pardoned after the death of his father.

A person attainted may purchase, but it shall be to the King's use.

There can be no restitution in blood without act of parliament; but a pardon enableth a man to purchase, and the heir begotten after shall inherit those lands.

IV. PROPERTY of lands by conveyance is first distributed into estates for years, for life, in tail, and fee-simple.

Property of land by conveyance divided into,
1. Estates in fee.
2. In tail.
3. For life.
4. For years

These estates are created by word, by writing, or by record.

† Leases for years, they go to the executors, and not to the heirs.

1. For estates of years, which are commonly called leases for years, they are thus made: where the owner of the land agreeth with the other by word of mouth, that the other shall have, hold, and enjoy the land, to take the profits thereof for a time certain of years, months, weeks, or days, agreed between them; and this is called a lease parol: such a lease may be made by writing poll, or indented of demise, grant, and to farm let, and so also by fine of record; but whether any rent be reserved or no, it is not material. Unto these † leases there may be annexed such exceptions, conditions, and covenants, as the parties can agree on. They are called chattels real, and are not inheritable by the heirs, but go to the executors, and administrators, and be saleable for debts in the life of the owner, or in the executors or administrators hands by writs of execution upon statutes, recognizances, judgments of debts or damages. They be also forfeitable to the crown by outlawry, by attainder for treason, felony, or premunire,

Leases are to be forfeit d by attainder.
1. In treason.
2. Felony.
3. Premunire.

killing

killing himſelf, flying for felony, although not guilty of the fact, ſtanding out, or refuſing to be tried by the county, by conviction of felony, by verdict without judgment, petty-larceny, or going beyond the ſea without licence.

4. By killing himſelf. 5. For flying. 6. Standing out, *etc.* 7. By conviction. 8. Petty larceny. 9. Going beyond the ſea without licence.

Theſe are forfeitable to the crown, in like manner as leaſes for years; viz. intereſt gotten in other mens lands by extending for debt upon judgment in any court of record, ſtatute merchant, ſtatute ſtaple, recognizances; which being upon ſtatutes, are called tenants by ſtatute merchant, or ſtaple, the other tenants by *elegit*, and by wardſhip of body and lands: for all theſe are called chattels real, and go to the executors and adminiſtrators, and not to the heirs; and are ſaleable and forfeitable as leaſes for years are.

Extents upon ſtat. ſtaple, merchant, or elegit. Wardſhip of body and lands are chattels, and forfeitable.

2. Leaſes for lives are alſo called free-holds: they may alſo be made by word or writing. There muſt be livery and ſeiſin given at the making of the leaſe by him, whom we call the leſſor; who cometh to the door, backſide, or garden, if it be a houſe, if not, then to ſome part of the land, and there he expreſſeth, that he doth grant unto the taker, called the leſſee, for term of his life; and in ſeiſin thereof, he delivereth to him a turf, twig, or ring of the door: and if the leaſe be by writing, then commonly there is a note written on the backſide of the leaſe, with the names of thoſe witneſſes who were preſent at the time of the livery of ſeiſin made. This eſtate is not ſaleable by the ſheriff for debt, but the land is to be extended for a yearly value, to ſatisfy the debt. It is not forfeitable by out-lawry, except in caſes of felony, nor by any of the means before mentioned, of leaſes for years; ſaving in an attainder for felony, treaſon, premunire, and then only to the crown, and not to the lords by eſcheat.

Leaſe for life how forfeitable.

Indorſement of livery, *etc.*

Leaſe for life not to be ſold by the ſheriff for debt, but extended at a yearly value.

And though a nobleman or other have liberty by charter, to have all felons goods; yet a tenant holding for term of life, being attainted of felony, doth forfeit unto the King, and not to this nobleman.

A man that hath *bona felon.* by charter, ſhall not have the eſtate, if leſſee for life be attainted.

If a man have an eſtate in lands for another man's life, and dieth; this land cannot go to his heir, nor to his executors, but to the party that firſt entreth; and he is called an occupant: as before hath been declared.

Occupant.

A leaſe for years or for life may be made alſo by fine of record, or bargain and ſale, or covenant, to ſtand ſeiſed upon good conſiderations of marriage, or blood; the reaſons whereof are hereafter expreſſed.

3. Entails of lands are created by a gift, with livery and ſeiſin to a man, and to the heirs of his body; this word (body) making the entail, may be demonſtrated and reſtrained to the males or females, heirs of their two bodies, or of the body of either of them, or of the body of the grandfather or father.

Of eſtate tails, and how ſuch an eſtate may be limited.

Entails of lands began by a ſtatute made in Ed. I's time, by which alſo they are ſo much ſtrengthened, as that the tenant in tail could not put away the land from the heir by any act of conveyance or attainder; nor lett it, nor incumber it, longer than his own life.

By the ſtat. of Weſt. 1. made in Ed. I's time, eſtates in tail were ſo ſtrengthened, that they were not forfeitable by any attainder.

But the inconvenience thereof was great, for by that means the land being ſo ſure tied upon the heir as that his father could not put it from him, it made the ſon to be diſobedient, negligent, and waſtful, often marrying without the father's conſent, and to grow inſolent in vice, knowing that there could be no check of diſinheriting him. It alſo made the owners of the land leſs fearful to commit murders, felonies, treaſons, and manſlaughters; for that they knew none of theſe acts could hurt the heir of his inheritance. It hindred men that had entailed lands, that they could not make the beſt of their lands by fine and improvement, for that none, upon ſo uncertain an eſtate as for term of his own life, would give him a fine of any value, nor lay any great ſtock upon the land, that might yield rent improved.

The great inconvenience that enſued thereof.

Laſtly, thoſe entails did defraud the crown, and many ſubjects of their debts; for that the land was not liable longer than his own life-time; which cauſed, that the King could not ſafely commit any office of account to ſuch whoſe lands were entailed, nor other men truſt them with loan of money.

The prejudice the crown received thereby.

Theſe inconveniencies were all remedied by acts of parliament; as namely, by acts of parliament later than the act of entails, made 4 H. VII. 32 H. VIII. a tenant in tail may diſinherit his ſon by a fine with proclamation, and may by that means alſo make it ſubject to his debts and ſales.

The ſtat. 4 H. VII and 32 H. VIII. to bar eſtates tail by fine.

26 H. VIII. 32 H. VIII.

By a ſtatute made 26 H. VIII. a tenant in tail doth forfeit his lands for treaſon; and by another act of parliament, 32 H. VIII. he may make leaſes good againſt his heir for one and twenty years, or three lives; ſo that it be not of his chief houſes, lands, or demeſne, or any leaſe in reverſion, nor leſs rent reſerved than the tenants have paid moſt part of one and twenty years before, nor have any manner of diſcharge for doing waſtes and ſpoils: by a ſtatute made 33 H. VIII. tenants of entailed lands are liable to the King's debts by extent; and by ſtatutes made 13 and 39 Eliz. they are ſaleable for the arrearages upon his account for his office; ſo that now it reſteth, that entailed lands have two privileges only, which be theſe. Firſt, not to be forfeited for felonies. Secondly, not to be extended for debts after the party's death, except the entails be cut off by fine and recovery.

33 H. VIII. 13 *et* 39 Eliz. Entails two privileges; 1. Not forfeitable for ſelony. 2 Not extendable for the debts of the party after his death: proviſo, not to exclude his next heir. If he do, to forfeit his eſtate, and the next heir muſt enter.

But it is to be noted, that ſince theſe notable ſtatutes, and remedies provided by ſtatutes, to dock entails, there is ſtarted up a deviſe called perpetuity, which is an entail with an addition of a proviſo conditional, tied to his eſtate, not to put away the land from his next heir; and if he do, to forfeit his own eſtate. Which perpetuities, if they ſhould ſtand, would bring in all the former inconveniencies ſubject to entails, that were cut off by the former-mentioned ſtatutes, and far greater; for by the perpetuity, if he that is in poſſeſſion ſtart away never ſo little, as in making a leaſe, or ſelling a little quillet, forgetting after two or three deſcents, as often they do, how they are tied; the next heir muſt enter, who peradventure is his ſon, his brother, uncle, or kinſman: and this raiſeth unkind ſuits, ſetting all the kindred at jars, ſome taking one part, ſome another, and the principal parties waſting their time and money in ſuits of law; ſo that in the end they are both conſtrained by neceſſity to join in a ſale of the land, or a great part of it, to pay their debts, occaſioned through their ſuits. And if the chief of the family, for any good purpoſe of well ſeating himſelf, by ſelling that which lieth far off, to buy that which is near, or for the advancement of his daughters or younger ſons, ſhould have reaſonable cauſe to ſell, this perpetuity, if it ſhould hold good, reſtraineth him. And more than that, where many are owners of inheritance of land not entailed, may, during the minority of his eldeſt ſon, appoint the profits to go to the advancement of the younger ſons and daughters, and pay debts; but by entails and perpetuities, the owners of theſe lands cannot do it, but they muſt ſuffer the whole to deſcend to the eldeſt ſon, and ſo to come to the crown by wardſhip all the time of his infancy.

Of a perpetuity, which is an entail with an addition.

Theſe perpetuities would bring in all the former inconveniencies of eſtates tail.

The inconveniencies of thoſe perpetuities.

Quære, whether it be better to reſtrain men by theſe perpetuities from alienations, or to hazard the undoing of houſes by unthrifty poſterity.

Wherefore, ſeeing the dangerous times and untowardly heirs, they might prevent thoſe miſchiefs of undoing their houſes, by conveying the land from ſuch heirs, if they were not tied to the ſtake by thoſe perpetuities, and reſtrained from forfeiting to the crown, and diſpoſing it to their own, or to their childrens good; therefore it is worthy of conſideration, whether it be better for the ſubject and ſovereign to have the lands ſecured to mens names and bloods by perpetuities, with all the inconveniencies abovementioned, or to be in hazard of undoing his houſe by unthrifty poſterity.

The laſt and greateſt eſtate in land is fee-ſimple.

4. The laſt and greateſt eſtate of lands is fee-ſimple, and beyond this there is none of the former for lives, years, or entails; but beyond them is fee-ſimple. For it is the greateſt, laſt, and uttermoſt degree of eſtates in land; therefore he that maketh a leaſe for life, or a gift in tail, may appoint a remainder when he maketh another for life or in tail, or to a third in fee-ſimple; but after a fee-ſimple he can limit no other eſtate. And if a man do not diſpoſe of the fee-ſimple by way of remainder, when he maketh the gift in tail, or for lives, then the fee-ſimple reſteth in himſelf as a reverſion. The difference between a reverſion and a remainder is this. The remainder is always a ſucceeding eſtate, appointed upon the gifts of a precedent eſtate at the time when the precedent is appointed. But the reverſion is an eſtate left in the giver, after a particular eſtate made by him for years, life, or entail. Where the remainder is made with the particular eſtates, then it muſt be done by deeds in writing, with livery and ſeiſin, and cannot be by words; and if the giver will diſpoſe of the reverſion after it remaineth in himſelf, he is to do it by writing, and not by word, and the tenant is to have notice of it, and to atturn to it, which is to

A remainder cannot be limited upon an eſtate in fee ſimple.

The difference between a remainder and a reverſion.

A reverſion cannot be granted by word.

give

give his aſſent by word, or paying rent, or the like; and except the tenant will thus atturn, the party to whom the reverſion is granted cannot have the reverſion, neither can he compel him by any law to atturn, except the grant of the reverſion be by fine; and then he may by writ provided for that purpoſe: and if he do not purchaſe that writ, yet by the fine the reverſion ſhall paſs; and the tenant ſhall pay no rent, except he will himſelf, nor be puniſhed for any waſte in houſes, woods, *etc.* unleſs it be granted by bargain and ſale by indenture enrolled. Theſe fee-ſimple eſtates lie open to all perils of forfeitures, extents, incumbrances, and ſales.

Atturnment muſt be had to the grant of the reverſion.

The tenant not compelable to atturn, but where the reverſion is granted by fine.

Lands are conveyed by theſe ſix means:

Lands may be conveyed, 1. By feoffment. 2. By fine. 3. By recovery. 4. By uſe. 5. By covenant. 6. By will.

1. By feoffment, which is, where by deed lands are given to one and his heirs, and livery and ſeiſin made according to the form and effect of the deed; if a leſſer eſtate than fee-ſimple be given, and livery of ſeiſin made, it is not called a feoffment, except the fee-ſimple be conveyed, but is otherwiſe called a leaſe for life or gift in tail, as above-mentioned.

What a fine is, and how lands may be conveyed hereby.

2. A fine is a real agreement, beginning thus, *Haec eſt finalis concordia, etc.* This is done before the King's judges in the court of common-pleas, concerning lands that a man ſhould have from another to him and his heirs, or to him for his life, or to him and the heirs males of his body, or for years certain, whereupon rent may be reſerved, but no condition or covenants. This fine is a record of great credit; and upon this fine are four proclamations made openly in the common-pleas; that is, in every term one, for four terms together; and if any man having right to the ſame, make not his claim within five years after the proclamations ended, he loſeth his right for ever, except he be an infant, a woman covert, a mad-man, or beyond the ſeas, and then his right is ſaved; ſo that the claim be within five years after full age, the death of her huſband, recovery of his wits, or return from beyond the ſeas. This fine is called a feoffment of record, becauſe that it includeth all the feoffment doth, and worketh farther of its own nature, and barreth entails peremptorily, whether the heir doth claim within five years or not, if he claim by him that levied the fine.

Five years non-claim barreth not, 1. An infant. 2. Feme covert. 3. Mad-man. 4. Beyond ſea.

Fine is a feoffment of record.

What recoveries are.

3. Recoveries are where for aſſurances of lands the parties do agree, that one ſhall begin an action real againſt the other, as though he had good right to the land, and the other ſhall not enter into defence againſt it, but alledge that he bought the land of I. H. who had warranted unto him, and pray that I. H. may be called in to defend the title, which I. H. is one of the cryers of the common-pleas, and is called the common-vouchee. This I. H. ſhall appear and make as if he would defend it, but ſhall pray a day to be aſſigned him in his matter of defence; which being granted him, at the day he maketh default, and thereupon the court is to give judgment againſt him; which cannot be for him to loſe his lands, becauſe he hath it not, but the party that he hath ſold it to hath that, who vouched him to warrant it.

Common vouchee one of the criers of the court.

Judgment for the demandant againſt the tenant in tail.

Therefore the demandant who hath no defence made againſt it, muſt have judgment to have the land againſt him that he ſued (who is called the tenant) and the tenant is to have judgment againſt I. H. to recover in value ſo much land of his, where in truth he hath none, nor never will. And by this device, grounded upon the ſtrict principles of law, the firſt tenant loſeth the land, and hath nothing for it; but it is by his own agreement for aſſurance to him that brought it.

Judgment for tenant to recover ſo much land in value of the common vouchee.

A recovery barreth an eſtate tail and all reverſions and remainders thereupon.

This recovery barreth entails, and all remainders and reverſions that ſhould take place after the entails, ſaving where the King is giver of the entail, and keepeth the reverſion to himſelf; then neither the heir, nor the remainder, nor reverſion, is barred by the recovery.

The reaſon why a common recovery barreth thoſe in remainder and reverſions.

The reaſon why the heirs, remainders, and reverſions are thus barred, is becauſe in ſtrict law the recompence adjudged againſt the crier that was vouchee, is to go in ſucceſſion of eſtate as the land ſhould have done, and then it was not reaſon to allow the heir the liberty to keep the land itſelf, and alſo to have recompence; and therefore he loſeth the land, and is to truſt to the recompence.

The many inconvenien-

This ſleight was firſt invented, when entails fell out to be ſo inconvenient as is before declared, ſo that men made no conſcience to cut them off, if they could find

cies of estates in tail brought in these recoveries, which are made now common conveyances and assurances for land.

find law for it. And now by use, those recoveries are become common assurances against entails, remainders, and reversions, and are the greatest security purchasers have for their money; for a fine will bar the heir in tail, and not the remainder, nor reversion, but a common recovery will bar them all.

Upon fines, feoffments, and recoveries, the estate doth settle according to the intent of the parties.

Upon feoffments and recoveries, the estate doth settle as the use and intent of the parties is declared by word or writing, before the act was done: as for example, if they make a writing that one of them shall levy a fine, make a feoffment, or suffer a common recovery to the other; but the use and intent is, that one should have it for his life, and after his decease a stranger to have it in tail, and then a third in fee-simple: in this case the land setleth in an estate according to the use and intent declared; and that by reason of the statute made 27 H. VIII. conveying the land in possession to him that hath interest in the use, or intent of the fine, feoffment, or recovery, according to the use and intent of the parties.

Bargains, sales, and covenants to stand seised to a use, are all grounded upon one statute.

Upon this statute is likewise grounded the fourth and fifth of the six conveyances, viz. bargains and sales, and covenants to stand seised to uses; for this statute, whereseever it findeth an use, conjoineth the possession to it, and turneth it into like quality of estate, condition, rent, and the like, as the use hath.

What a use is.

4. The use is but the equity and honesty to hold the land *in conscientia boni viri*. As for example; I and you agree that I shall give you money for your land, and you shall make me assurance of it. I pay you the money, but you made me not assurance of it. Here although the estate of the land be still in you, yet the equity and honesty to have it is with me; and this equity is called the use, upon which I had no remedy but in chancery, until this statute was made of 27 H. VIII. and now this statute conjoineth and conveyeth the land to him that hath the use. I for my money paid to you, have the land itself, without any other conveyance from you; and it is called a bargain and sale.

Before 27 H. 8. there was no remedy for a use, but in chancery.

The stat. of 27 H. 8. doth not pass land upon the payment of money without a deed indented and enrolled.

But the parliament that made that statute did foresee, that it would be mischievous that mens lands should so suddenly, upon the payment of a little money, be conveyed from them, peradventure in an alehouse or a tavern upon strainable advantages, did therefore gravely provide another act in the same parliament, that the land upon payment of this money should not pass away, except there were a writing indented, made between the said two parties, and the said writing also within six months inrolled in some of the courts at Westminster, or in the sessions-rolls in the shire where the land lyeth; unless it be in cities or corporate towns where they did use to enroll deeds, and there the statute extendeth not.

The stat. of 27 H. 8. extendeth not to places where they did enroll deeds.

A covenant to stand seised to a use.

5. The fifth conveyance is a covenant to stand seised to uses. It is in this sort: A man that hath a wife and children, brethren, and kinsfolks, may by writing under his hand and seal agree, that for their or any of their preferment he will stand seised of his lands to their uses, either for life, in tail, or fee, so as he shall see cause; upon which agreement in writing, there ariseth an equity or honesty, that the land should go according to those agreements; nature and reason allowing these provisions; which equity and honesty is the use. And the use being created in this sort, the statute of 27 H. VIII. before mentioned, conveyeth the estate of the land, as the use is appointed.

Upon an agreement in writing to stand seised to the use of any of his kindred, a use may be created, *etc.*

A covenant to stand seised to a use needeth not enrollment as a bargain and sale to a use doth, *etc.*

And so this covenant to stand seised to uses, is at this day, since the said statute, a conveyance of land; and with this difference from a bargain and sale, in that this needeth no enrollment, as a bargain and sale doth; nor needeth it to be in writing indented, as bargain and sale must: and if the party to whose use he agreeth to stand seised of the land, be not wife, or child, cousin, or one that he meaneth to marry, then will no use rise, and so no conveyance; for although the law alloweth such weighty considerations of marriage and blood raise uses, yet doth it not admit so trifling considerations, as of acquaintance, schooling, services, or the like.

Upon a fine, feoffment, or recovery a man may limit the use to whom he listeth, without

But where a man maketh an estate of his land to others, by fine, feoffment, or recovery, he may then appoint the use to whom he listeth, without respect of marriage, kindred, or other things; for in that case his own will and declaration guideth the equity of the estate. It is not so when he maketh no estate,

but

but agreeth to ſtand ſeiſed, nor when he hath taken any thing, as in the caſes of bargain and ſale, and covenant, to ſtand ſeiſed to uſes.

consideration of blood, or money. Otherwiſe, in a bargain and ſale, or covenant.

6. The laſt of the ſix conveyances is a will in writing; which courſe of conveyance was firſt ordained by a ſtatute made 32 H. VIII. before which ſtatute no man might give land by will, except it were in a borough town, where there was an eſpecial cuſtom that men might give their lands by will; as in London, and many other places.

Of the conveyance of land by will.

The not giving of land by will was thought to be a defect at common law, that men in wars, or ſuddenly falling ſick, had no power to diſpoſe of their lands, except they could make a feoffment, or levy a fine, or ſuffer a recovery; which lack of time would not permit: and for men to do it by theſe means, when they could not undo it again, was hard; beſides, even to the laſt hour of death, mens minds might alter upon further proofs of their children or kindred, or encreaſe of children or debt, or defect of ſervants or friends.

The not diſpoſing of lands by will, was thought to be a defect at the common law.

For which cauſe, it was reaſon that the law ſhould permit him to reſerve to the laſt inſtant the diſpoſing of his lands, and to give him means to diſpoſe of it; which ſeeing it did not fitly ſerve, men uſed this deviſe:

The courſe that was invented before the ſtat. of 32 H. 8. firſt gave power to deviſe lands by will, was a conveyance of lands to feoffees in truſt, to ſuch perſons as they ſhould declare in their will.

They conveyed their full eſtates of their lands, in their good health, to friends in truſt, properly called feoffees in truſt; and then they would by their wills declare how their friends ſhould diſpoſe of their lands; and if thoſe friends would not perform it, the court of chancery was to compel them by reaſon of truſt; and this truſt was called the uſe of the land, ſo as the feoffees had the land, and the party himſelf had the uſe; which uſe was in equity, to take the profits for himſelf, and that the feoffees ſhould make ſuch an eſtate as he ſhould appoint them; and if he appointed none, then the uſe ſhould go to the heir, as the eſtate itſelf of the land ſhould have done; for the uſe was to the eſtate like a ſhadow following the body.

The inconveniences of putting land into uſe.

By this courſe of putting lands into uſe there were many inconveniences, as this uſe, which grew firſt for a reaſonable cauſe, viz. to give men power and liberty to diſpoſe of their own, was turned to deceive many of their juſt and reaſonable rights; as namely, a man that had cauſe to ſue for his land, knew not againſt whom to bring his action, nor who was owner of it. The wife was defrauded of her thirds; the huſband of being tenant by courteſy; the lord of his wardſhip, relief, heriot, and eſcheat; the creditor of his extent for debt; the poor tenant of his leaſe; for theſe rights and duties were given by law from him that was owner of the land, and none other; which was now the feoffee of truſt; and ſo the old owner, which we call the feoffor, ſhould take the profits, and leave the power to diſpoſe of the land at his diſcretion to the feoffee; and yet he was not ſuch a tenant as to be ſeiſed of the land, ſo as his wife could have dower, or the lands be extended for his debts, or that he could forfeit it for felony or treaſon, or that his heir could be in ward for it, or any duty of tenure fall to the lord by his death, or that he could make any leaſes of it.

The frauds of conveyances to uſe, by degrees of time, as they increaſed, were remedied by the ſtatutes.

Which frauds by degrees of time as they encreaſed, were remedied by divers ſtatutes: as namely, by a ſtatute of 1 H. VI. and 4 H. VIII. it was appointed that the action may be tried againſt him which taketh the profits, which was then *ceſtuy que uſe*; by a ſtatute made 1 R. III. leaſes and eſtates made by *ceſtuy que uſe* are made good, and eſtates by him acknowledged. 4 H. VII. the heir of *ceſtuy que uſe* is to be in ward; 16 H. VIII. the lord is to have relief upon the death of any *ceſtuy que uſe*.

27 H. 8. taking away all uſes, reduceth the law to the ancient form of conveyances of land, by feoffment, fine, and recovery.

Which frauds nevertheleſs multiplying daily, in the end, 27 H. VIII. the parliament, purpoſing to take away all thoſe uſes, and reducing the law to the ancient form of conveying of lands by publick livery of ſeiſin, fine, and recovery, did ordain, that where lands were put in truſt or uſe, there the poſſeſſion and eſtate ſhould be preſently carried out of the friends in truſt, and ſettled and inveſted on him that had the uſes, for ſuch term and time as he had the uſe.

In what manner the ſtat. of 32 H. 8.

By this ſtatute of 27 H. VIII. the power of diſpoſing land by will is clearly taken away amongſt thoſe frauds; whereupon 32 H. VIII. another ſtatute was made, to give men power to give lands by will in this ſort. Firſt, it muſt be by will in writing. Secondly, he muſt be ſeiſed of an eſtate in fee-ſimple; for

giveth power to diſpoſe of lands by will.

tenant for another man's life, or tenant in tail, cannot give land by will; by that ſtatute 32 H. VIII. he muſt be ſolely ſeiſed, and not jointly with another; and then being thus ſeiſed, for all the land he holdeth in ſocage tenure, he may give it by will, except he hold any piece of land *in capite* by knight's ſervice of the King; and then laying all together, he can give but two parts by will: for the third part of the whole, as well in ſocage as *in capite*, muſt deſcend to the heir, to anſwer wardſhip, livery, and primer ſeiſin to the crown.

If a man be ſeiſed of *capite* lands and ſocage, he cannot deviſe but two parts of the whole. The third part muſt deſcend to the heir to anſwer wardſhip, livery and ſeiſin to the crown.

And ſo if he hold lands by knight's ſervice of a ſubject, he can deviſe of the land but two parts, and the third the lord by wardſhip, and the heir by deſcent is to hold.

A conveyance by deviſe of *capite* lands to the wife for her jointure, *etc.* void for a third part, by 32 H. VIII.

And if a man that hath three acres of land holden *in capite* by knight's ſervice, do make a jointure to his wife of one, and convey another to any of his children, or to friends, to take the profits, and to pay his debts, or legacies, or daughters portions, then the third acre or any part thereof he cannot give by will, but muſt ſuffer it to deſcend to the heir, and that muſt ſatisfy wardſhip.

But a conveyance by act executed in the life-time of the party of ſuch lands to ſuch uſes is not void: but if the heir be within age, he ſhall have one third to be in ward.

Yet a man having three acres as before, may convey all to his wife, or children, by conveyance in his life-time, as by feoffment, fine, recovery, bargain and ſale, or covenant to ſtand ſeiſed to uſes, and diſinherit the heir. But if the heir be within age when his father dieth, the King or other lord ſhall have that heir in ward, and ſhall have one of the three acres during the wardſhip, and to ſue livery and ſeiſin. But at full age the heir ſhall have no part of it, but it ſhall go according to the conveyance made by the father.

Entailed lands part of the thirds.

It hath been debated how the thirds ſhall be ſet forth. For it is the uſe, that all lands which the father leaveth to deſcend to the heir, being fee-ſimple, or in tail, muſt be part of the thirds; and if it be a full third, then the King, nor heir, nor lord, can intermeddle with the reſt; if it be not a full third, yet they muſt take it ſo much as it is, and have a ſupply out of the reſt.

The King nor lord cannot intermeddle if a full third part be left to deſcend to the heir.

This ſupply is to be taken thus; if it be the King's ward, then by a commiſſion out of the court of wards, whereupon a jury by oath muſt ſet forth ſo much as ſhall make up the thirds, except the officers of the court of wards can otherwiſe agree with the parties. If there be no wardſhip due to the King, then the other lord is to have this ſupply by a commiſſion out of the chancery, and jury thereupon.

The manner of making ſupply, when the part of the heir is not a full third.

But in all thoſe caſes, the ſtatutes do give power to him that maketh the will, to ſet forth and appoint of himſelf which lands ſhall go for thirds, and neither King nor lord can refuſe it. And if it be not enough, yet they muſt take that in part, and only have a ſupply in manner as before is mentioned out of the reſt.

The ſtatutes give power to the teſtator to ſet out the third himſelf, *etc.*

Property in goods.

Of the ſeveral ways whereby a man may get property in goods or chattels.

I. By gift.
II. By ſale.
III. By ſtealing.
IV. By waving.
V. By ſtraying.
VI. By ſhipwreck.
VII. By forfeiture.
VIII. By executorſhip.
IX. By adminiſtration.
X. By legacy.

I. Property by gift.

A deed of gift of goods to deceive his creditors is void againſt them, but good againſt the executors, adminiſtrators, or vendee of the party himſelf.

By gift, the property of goods may be paſſed by word or writing; but if there be a general deed of gift made of all his goods, this is ſuſpicious to be done upon fraud, to deceive the creditors.

And if a man who is in debt make a deed of gift of all his goods to protect the taking of them in execution for his debt, this deed of gift is void, as againſt thoſe to whom he ſtood indebted; but as againſt himſelf, his own executors or adminiſtrators, or any man to whom afterwards he ſhall ſell or convey them, it is good.

II. By

II. By ſale.

Property in goods by ſale. By ſale, any man may convey his own goods to another; and although he may fear execution for debts, yet he may ſell them out-right for money at any time before the execution ſerved; ſo that there be no reſervation of truſt between them, that, repaying the money, he ſhall have the goods again; for that truſt, in ſuch caſe, doth prove plainly a fraud, to prevent the creditors from taking the goods in execution.

What is a ſale *bona fide* and what not, when there is a private reſervation of truſt between the parties.

III. By theft, or taking in jeſt.

Property of goods by theft, or taking in jeſt. If any man ſteal my goods or chattels, or take them from me in jeſt, or borrow them of me, or as a treſpaſſer or felon carry them to the market or fair, and ſell them, this ſale doth bar me of the property of my goods, ſaving that if he be a horſe he muſt be ridden two hours in the market or fair, between ten and five a clock, and tolled for in the toll-book, and the ſeller muſt bring one to avouch his ſale, known to the toll-book-keeper: or elſe the ſale bindeth me not. And for any other goods, where the ſale in a market or fair ſhall bar the owner, being not the ſeller of his property, it muſt be ſale in a market or fair where uſually things of that nature are ſold. As for example; if a man ſteal a horſe, and ſell him in Smithfield, the true owner is barred by this ſale; but if he ſell the horſe in Cheapſide, Newgate, or Weſtminſter market, the true owner is not barred by this ſale; becauſe theſe markets are uſual for fleſh, fiſh, *etc.* and not for horſes.

How a ſale in market ſhall be a bar to the owner.

Of markets; and what markets ſuch a ſale ought to be made in.

So whereas by the cuſtom of London in every ſhop there is a market all the days of the week, ſaving Sundays and Holidays; yet if a piece of plate or jewel that is loſt, or chain of gold or pearl that is ſtolen or borrowed, be ſold in a draper's or ſcrivener's ſhop, or any other but a goldſmith's, this ſale barreth not the true owner, *et ſic in ſimilibus.*

Yet by ſtealing alone of goods, the thief getteth not ſuch property, but that the owner may ſeize them again whereſoever he findeth them, except they were ſold in fair or market, after they were ſtolen, and that *bona fide* without fraud.

The owner may ſeize his goods after they are ſtolen.

But if the thief be condemned of the felony, or out-lawed for the ſame, or out-lawed in any perſonal action, or have committed a forfeiture of goods to the crown, then the true owner is without remedy.

If the thief be condemned for felony, or outlawed, or forfeit the ſtolen goods to the crown, the owner is without remedy

Nevertheleſs, if freſh after the goods were ſtolen, the true owner maketh purſuit after the thief and goods, and taketh the goods with the thief, he may take them again: and if he make no freſh purſuit, yet if he proſecute the felon, ſo far as juſtice requireth, that is, to have him arraigned, indicted, and found guilty (though he be not hanged, nor have judgment of death) or have him out-lawed upon the indictment; in all theſe caſes he ſhall have his goods again, by a writ of reſtitution to the party in whoſe hands they are.

When the owner may take his goods from the thief.

IV. By waving of goods.

By waving of goods, a property is gotten thus. A thief having ſtolen goods, being purſued, flieth away and leaveth the goods. This leaving is called waving, and the property is in the King; except the lord of the manor have right to it, by cuſtom or charter.

If he convict the thief of the ſame felony, he ſhall have his goods again by a writ of reſtitution.

But if the felon be indicted, adjudged, or found guilty, or outlawed, at the ſuit of the owner of theſe goods, he ſhall have reſtitution of theſe goods, as before.

V. By ſtraying.

By ſtraying, property in live cattel is thus gotten. When they come into other mens grounds ſtraying from the owners, then the party or lord into whoſe grounds or manors they come, cauſeth them to be ſeiſed, and a wythe put about their necks, and to be cried in three markets adjoining, ſhewing the marks of the cattel; which done, if the true owner claimeth them not within a year and a day, then the property of them is in the lord of the manor whereunto they did ſtray, if he have all ſtrays by cuſtom or charter, elſe to the King.

VI. Wreck

VI. Wreck, and when it ſhall be ſaid to be.

By ſhipwreck, property of goods is thus gotten. When a ſhip loaden is caſt away upon the coaſts, ſo that no living creature that was in it when it began to ſink eſcaped to land with life, then all thoſe goods are ſaid to be wrecked, and they belong to the crown if they be found; except the lord of the ſoil adjoining can entitle himſelf unto them by cuſtom, or by the King's charter.

VII. Forfeitures.

By forfeitures, goods and chattels are thus gotten. If the owner be out-lawed, if he be indicted of felony, or treaſon, or either confeſs it, or be found guilty of it, or refuſe to be tried by peers or jury, or be attainted by judgment, or fly for felony (although he be not guilty,) or ſuffer the exigent to go forth againſt him (although he be not outlawed,) or that he go over the ſeas without licence, all the goods he had at the judgment, he forfeiteth to the crown; except ſome lord by charter can claim them. For in thoſe caſes preſcription will not ſerve, except it be ſo ancient, that it hath had allowance before the juſtices in eyre in their circuits, or in the King's bench in ancient time.

VIII. By executorſhip.

By executorſhip goods are thus gotten. When a man poſſeſſed of goods maketh his laſt will and teſtament in writing or by word, and maketh one or more executors thereof; theſe executors have, by the will and death of the parties, all the property of their goods, chattels, leaſes for years, wardſhips and extents, and all right concerning thoſe things.

Executors may before probat diſpoſe of the goods, but not bring an action for any debt.

Thoſe executors may meddle with the goods, and diſpoſe them before they prove the will, but they cannot bring an action for any debt or duty before they have proved the will.

What probat of the will is, and in what manner it is made.

The proving of the will is thus. They are to exhibit the will into the biſhop's court, and there they are to bring the witneſſes, and there they are to be ſworn, and the biſhop's officers are to keep the will original, and certify the copy thereof in parchment under the biſhop's ſeal of office; which parchment ſo ſealed, is called the will proved.

IX. By letters of adminiſtration.

By letters of adminiſtration property in goods is thus gotten. When a man poſſeſſed of goods dieth without any will, there ſuch goods as the executors ſhould have had, if he had made a will, were by ancient law to come to the biſhop of the dioceſe, to diſpoſe for the good of his ſoul that died, he firſt paying his funerals and debts, and giving the reſt *ad pios uſus*.

Pii uſus.

This is now altered by ſtatute laws, ſo as the biſhops are to grant letters of adminiſtration of the goods at this day to the wife if ſhe requireth it, or children, or next of kin; if they refuſe it, as often they do, becauſe the debts are greater than the eſtate will bear, then ſome creditor or ſome other will take it as the biſhop's officers ſhall think meet. It groweth often in queſtion what biſhop ſhall have the right of proving wills, and granting adminiſtration of goods.

† Where the inteſtate had *bona notabilia* in diverſe dioceſes, then the archbiſhop of that province where he died is to commit the adminiſtration.

In † which controverſy the rule is thus, that if the party dead had at the time of his death *bona notabilia* in diverſe dioceſes of ſome reaſonable value, then the archbiſhop of the province where he died is to have the probat of his will, or to grant the adminiſtration of his goods, as the caſe falleth out; otherwiſe the biſhop of the dioceſe where he died is to do it.

Executor may refuſe before the biſhop, if he have not intermeddled with the goods.

If there be but one executor made, yet he may refuſe the executorſhip, coming before the biſhop, ſo that he hath not intermeddled with any of the goods before, or with receiving debts, or paying legacies.

Executor ought to pay, 1. Judgments. 2. Stat recogn.

And if there be more executors than one, ſo many as liſt may refuſe; and if any one take it upon him, the reſt that did once refuſe may, when they will, take it upon them; and no executor ſhall be farther charged with debts or legacies, than the value of the goods come to his hands; ſo that he foreſee that he pay debts upon record, firſt debts to the King, then upon judgments, ſtatutes,

tutes, recognizances, then debts by bond and bill ſealed, rent unpayed, ſervants wages, payment to head workmen, and laſtly, ſhop-books, and contracts by word. For if an executor, or adminiſtrator pay debts to others before debts to the King, or debts due by bond before thoſe due by record, or debts by ſhop-books and contracts before thoſe by bond, arrearages of rent, and ſervants or workmens wages, he ſhall pay the ſame over again to thoſe others in the ſaid degrees.

3. Debts by bonds and bills ſealed.
4. Rent unpaid.
5. Servants wages.
6. Headworkmen.
7. Shop-books and contracts by word.

But yet the law giveth them choice, that where divers have debts due in equal degree of record or ſpecialty, he may pay which of them he will, before any ſuit brought againſt him; but if ſuit be brought he muſt firſt pay them that get judgment againſt him.

Debts due in equal degree of record, the executor may pay which of them he pleaſe before ſuit commenced.

Any one executor may convey the goods, or releaſe debts without his companion, and any one by himſelf may do as much as all together; but one man's releaſing of debts or ſelling of goods, ſhall not charge the other to pay ſo much of the goods, if there be not enough to pay debts; but it ſhall charge the party himſelf that did ſo releaſe or convey.

Any one executor may do as much as all together: but if a debt be releaſed and aſſets wanting, he only ſhall be charged.

But it is not ſo with adminiſtrators, for they have but one authority given them by the biſhop over the goods, which authority being given to many is to be executed by all of them joined together.

Otherwiſe of adminiſtrators.

And if an executor die making an executor, the ſecond executor is executor to the firſt teſtator.

Executor dieth making his executor, the ſecond executor ſhall be executor to the firſt teſtator.

But if an adminiſtrator die inteſtate, then his adminiſtrator ſhall not be executor or adminiſtrator to the firſt; but in that caſe the biſhop, whom we call the ordinary, is to commit the adminiſtration of the firſt teſtator's goods to his wife, or next of kin, as if he had died inteſtate; always provided, that that which the executor did in his life-time, is to be allowed for good. And ſo if an adminiſtrator die and make his executor, the executor of the adminiſtrator ſhall not be executor to the firſt inteſtate; but the ordinary muſt new commit the adminiſtration of the goods of the firſt inteſtate again.

But otherwiſe, if the adminiſtrator die making his executor, or if adminiſtration be committed of his goods. In both caſes the ordinary ſhall commit adminiſtration of the goods of the firſt inteſtate. Executors or adminiſtrators may retain.

If the executor or adminiſtrator pay debts, or funerals, or legacies of his own money, he may retain ſo much of the goods in kind, of the teſtator or inteſtate, and ſhall have property of it in kind.

X. Property by legacy.

Property by legacy, is where a man maketh a will and executors, and giveth legacies, he or they to whom the legacies are given muſt have the aſſent of the executors, or one of them, to have his legacy; and the property of that legacy or other goods bequeathed unto him, is ſaid to be in him; but he may not enter nor take his legacy without the aſſent of the executors, or one of them; becauſe the executors are charged to pay debts before legacies. And if one of them aſſent to pay legacies, he ſhall pay the value thereof of his own purſe, if there be not otherwiſe ſufficient to pay debts.

Executors or adminiſtrators may retain; becauſe the executors are charged to pay ſome debts before legacies.

But this is to be underſtood by debts of record to the King, or by bill and bond ſealed, or arrearages of rent, or ſervants or workmens wages; and not debts of ſhop-books, or bills unſealed, or contract by word; for before them legacies are to be paid.

Legacies are to be paid before debts by ſhopbooks, bills unſealed, or contracts by word.

And if the executors doubt that they ſhall not have enough to pay every legacy, they may pay which they liſt firſt; but they may not ſell any ſpecial legacy which they will to pay debts, or a leaſe of goods to pay a money legacy. But they may ſell any legacy which they will to pay debts, if they have not enough beſides.

Executor may pay which legacy he will firſt. If the executors do want, they may ſell any legacy to pay debts.

If a man make a will and make no executors, or if the executors refuſe, the ordinary is to commit adminiſtration, *cum teſtamento annexo*, and take bonds of the adminiſtrators to perform the will, and he is to do it in ſuch ſort, as the executor ſhould have done, if he had been named.

When a will is made and no executor named, adminiſtration is to be committed *cum teſtamento annexo.*

An Account of the lately erected Service,

CALLED,

The Office of Compositions for Alienations.

Written [about the close of 1598] by Mr. Francis Bacon,

And published from a MS. in the Inner-Temple Library.

ALL the finances or revenues of the imperial crown of this realm of England, be either extraordinary or ordinary. The sundry sorts of the royal revenue.

Those extraordinary, be fifteenths and tenths, subsidies, loans, benevolences, aids, and such others of that kind, that have been, or shall be invented for supportation of the charges of war; the which as it is entertained by diet, so can it not be long maintained by the ordinary fiscal and receipt.

Of these that be ordinary, some are certain and standing, as the yearly rents of the demesne or lands; being either of the ancient possessions of the crown, or of the later augmentations of the same.

Likewise the fee farms reserved upon charters granted to cities and towns corporate, and the blanch rents and lath silver answered by the sheriffs. The residue of these ordinary finances be casual, or uncertain, as be the escheats and forfeitures, the customs, butlerage and impost, the advantages coming by the jurisdiction of the courts of record and clerks of the market, the temporalities of vacant bishopricks, the profits that grow by the tenures of lands, and such like, if there any be.

And albeit that both the one sort and other of these, be at the last brought unto that office of her majesty's exchequer, which we (by a metaphor) do call the pipe, as the civilians do by a like translation name it *Fiscus*, a basket or bag, because the whole receipt is finally conveyed into it by the means of divers small pipes or quills, as it were water into a great head or cistern; yet nevertheless some of the same be first and immediately left in other several places and courts, from whence they are afterwards carried by silver streams, to make up that great lake, or sea, of money. The pipe.

As for example, the profits of wards and their lands be answered into that court which is proper for them; and the fines for all original writs, and for causes that pass the great seal, were wont to be immediately paid into the hanaper of the chancery: howbeit now of late years, all the sums which are due, either for any writ of covenant, or of other sort (whereupon a final concord is to be levied in the common bench) or for any writ of entry (whereupon a common recovery is to be suffered there;) as also all sums demandable, either for licence of alienation to be made of lands holden in chief, or for the pardon of any such alienation, already made without licence, together with the mean profits that be forfeited for that offence and trespass, have been stayed in the way to the hanaper, and been lett to farm, upon assurance of three hundred pound of yearly standing profit, to be increased over and above that casual commodity, that was found to be answered in the hanaper for them, in the ten years (one with another) next before the making of the same lease. The hanaper. This office is derived out of the hanaper.

And yet so as that yearly rent of increase is now still paid into the hanaper by four gross portions, not altogether equal, in the four usual open terms of St. Michael, and St. Hilary, of Easter, and the Holy Trinity, even as the former casualty itself was wont to be (in parcel meal) brought in and answered there.

And now forasmuch as the only matter and subject about which this farmer, or his deputies, are employed, is to rate or compound the sums of money payable to her majesty, for the alienation of lands that are either made without licence, or to be made by licence (if they be holden in chief,) or to pass for common recovery, or by final concord to be levied (though they be not so holden) their service may therefore very aptly and agreeably be termed the office of compositions for alienations. Whether the advancement of her majesty's commodity in this part of her prerogative, or the respect of private lucre, or both, were the The name of the office.

first

firſt motives thus to diſſever this member, and thereby as it were to mayhem the chancery, it is neither my part nor purpoſe to diſpute.

The ſcope of the diſcourſe, and the parts thereof.

But for a full inſtitution of the ſervice as it now ſtandeth, howſoever ſome men have not ſpared to ſpeak hardly thereof, I hold worthy my labour to ſet down as followeth.

Firſt, That theſe fines, exacted for ſuch alienations, be not only of the greateſt antiquity, but are alſo good and reaſonable in themſelves: ſecondly, that the modern and preſent exerciſe of this office, is more commendable than was the former uſage: and laſtly, that as her majeſty hath received great profit thereby, ſo may ſhe, by a moderate hand, from time to time reap the like, and that without juſt grief to any of her ſubjects.

The firſt part of this treatiſe.

As the lands that are to be aliened, be either immediately holden in chief, or not ſo holden, of the queen: ſo be theſe fines or ſums reſpectively of two ſundry ſorts. For upon each alienation of lands, immediately held of her majeſty in chief, the fine is rated here, either upon the licence before the alienation is made, or elſe upon the pardon when it is made without licence. But generally for every final concord of lands to be levied upon a writ of covenant, *warrantia chartae*, or other writ, upon which it may be orderly levied, the ſum is rated here upon the original writ, whether the lands be held of the queen, or of any other perſon; if at the leaſt the lands be of ſuch value, as they may yield the due fine. And likewiſe for every writ of entry, whereupon a common recovery is to be ſuffered, the queen's fine is to be rated there upon the writ original, if the lands compriſed therein be held of her by the tenure of her prerogative, that is to ſay, in chief, or of her royal perſon.

The king's tenant in chief could never alien without licence. 1 E. III. c. 12.

So that I am hereby inforced, for avoiding of confuſion, to ſpeak ſeverally, firſt of the fines for alienation of lands held in chief, and then of the fines upon the ſuing forth of writs original. That the king's tenant in chief could not in ancient time alien his tenancy without the king's licence, it appeareth by the ſtatute (1 E. III. *cap.* 12.) where it is thus written: "Whereas divers do com-
"plain, that the lands (holden of the king in chief, and aliened without licence)
"have been ſeized into the king's hands for ſuch alienation, and holden as forfeit:
"the king ſhall not hold them as forfeit in ſuch a caſe, but granteth that (upon ſuch
"alienations) there ſhall be reaſonable fines taken in the chancery by due proceſs."

So that it is hereby proved, that before this ſtatute, the offence of ſuch alienation, without licence, was taken to be ſo great, that the tenant did forfeit the land thereby; and conſequently that he found great favour there by this ſtatute, to be reaſonably fined for his treſpaſs.

And although we read an opinion 20 *lib. Aſſiſ. parl.* 17, *et* 26. *Aſſ. parl.* 37. which alſo is repeated by Hankf. 14 *H.* 4. *fol.* 3. in which year Magna Charta was confirmed by him, the king's tenant in chief might as freely alien his lands without licence, as might the tenant of any other lord: yet foraſmuch as it appeareth not by what ſtatute the law was then changed, I had rather believe (with old judge Thorpe, and late juſtice Stanford) that even at the common law, which is as much as to ſay, as from the beginning of our tenures, or from the beginning of the Engliſh monarchy, it was accounted an offence in the king's tenant in chief, to alien without the royal and expreſs licence.

And I am ſure, that not only upon the entring, or recording, of ſuch a fine for alienation, it is wont to be ſaid *pro tranſgreſſione in hac parte facta*; but that you may alſo read amongſt the records in the Tower (*Fines* 6 *Hen. Reg.* 3. *Memb.* 4.) a precedent of a *capias in manum regis terras alienatas ſine licentia regis*, and that namely of the manour of Coſeleſcombe in Kent, whereof Robert Ceſterton was then the king's tenant in chief. But were it that, as they ſay, this began firſt 20 Hen. III. yet it is above three hundred and ſixty years old, and of equal if not more antiquity than Magna Charta itſelf, and the reſt of our moſt ancient laws; the which never found aſſurance by parliament, until the time of King Edw. I. who may be therefore worthily called our Engliſh Solon or Lycurgus.

The fine for alienation is moderate.

Now therefore to proceed to the reaſon and equity of exacting theſe fines for ſuch alienations, it ſtandeth thus: when the king (whom our law underſtandeth to have been at the firſt both the ſupreme lord of all the perſons, and ſole owner

of

of all the lands within his dominions) did give lands to any ſubject to hold them of himſelf, as of his crown and royal diadem, he vouchſafed that favour upon a choſen and ſelected man, not minding that any other ſhould (without his privity and good liking) be made owner of the ſame. And therefore his gift has this ſecret intention incloſed within it, that if his tenant and patentee ſhall diſpoſe of the ſame without his kingly aſſent firſt obtained, the lands ſhall revert to the king, or to his ſucceſſors, that firſt gave them: and that alſo was the very cauſe, as I take it, why they were anciently ſeized into the king's hands as forfeit by ſuch alienation, until the making of the ſaid ſtatute (1 Edw. III.) which did qualify that rigour of the former law.

Neither ought this to ſeem ſtrange in the caſe of the king, when every common ſubject (being lord of lands which another holdeth of him) ought not only to have notice given unto him upon every alienation of his tenant, but ſhall (by the like implied intention) re-have the lands of his tenants dying without heirs, though they were given out never ſo many years agone, and have paſſed through the hands of howſoever many and ſtrange poſſeſſors.

Not without good warrant, therefore, ſaid Mr. Fitzherbert in his *Nat. Brev. fol.* 147. that the juſtices ought not wittingly to ſuffer any fine to be levied of lands holden in chief, without the king's licence. And as this reaſon is good and forcible, ſo is the equity and moderation of the fine itſelf moſt open and apparent; for how eaſy a thing is it to redeem a forfeiture of the whole lands for ever with the profits of one year, by the purchaſe of a pardon? Or otherwiſe, how tolerable is it to prevent the charge of that pardon, with the only coſt of a third part thereof, timely and beforehand beſtowed upon a licence?

The antiquity and moderation of fines upon writs original.

Touching the king's fines accuſtomably paid for the purchaſing of writs original, I find no certain beginning of them, and do therefore think that they alſo grew up with the chancery, which is the ſhop wherein they be forged; or, if you will, with the firſt ordinary juriſdiction and delivery of juſtice itſelf.

For when as the king had erected his courts of ordinary reſort, for the help of his ſubjects in ſuit one againſt another, and was at the charge not only to wage juſtices and their miniſters, but alſo to appoint places and officers for ſafe cuſtody of the records that concerned not himſelf; by which means each man might boldly both crave and have law for the preſent, and find memorials alſo to maintain his right and recovery, for ever after, to the ſingular benefit of himſelf and all his poſterity: it was conſonant to good reaſon, that the benefited ſubject ſhould render ſome ſmall portion of his gain, as well towards the maintenance of this his own ſo great commodity, as for the ſupportation of the king's expence, and the reward of the labour of them that were wholly employed for his profit.

And therefore it was well ſaid by Littleton, (34 *H.* 6. *fol.* 38.) that the chancellor of England is not bound to make writs, without his due fee for the writing and ſeal of them. And that, in this part alſo, you may have aſſurance of good antiquity, it is extant among the records in the Tower, 2 *H.* III. *Membr.* 6. that Simon Hales and others gave unto him their king, *unum palfredum pro ſummonendo Richardo filio et haerede Willielmi de Hanred, quod teneat finem factum coram juſticiariis apud Northampton, inter dictum Willielmum et patrem dicti Arnoldi de feodo in Barton.* And beſides that *(in oblatis de ann.* 1, 2, & 7. *regis Johannis)* fines were diverſely paid to the king upon the purchaſing writs of mort d'aunceſtor, dower, pone, to remove pleas for inquiſitions, trial by juries, writs of ſundry ſummons, and other more.

Littl. 34 H. 6. *fol.* 38.

Hereof then it is, that upon every writ procured for debt or damage, amounting to forty pounds or more, a noble, that is, ſix ſhillings and eight pence, is, and uſually hath been paid to fine; and ſo for every hundred marks more a noble: and likewiſe upon every writ called a *præcipe* of lands, exceeding the yearly value of forty ſhillings, a noble is given to a fine; and for every other five marks by year, moreover another noble, as it is ſet forth 20 Rich. II. (abridged both by juſtice Fitzherbert, and juſtice Brooke;) and may alſo appear in the old *Natura Brevium*, and the regiſter, which have a proper writ of deceipt,

20 Rich. II.

formed upon the caſe, where a man did (in the name of another) purchaſe ſuch a writ in the chancery without his knowledge and conſent.

And herein the writ of right is excepted and paſſeth freely; not for fear of the words in *Magna Charta*, *Nulli vendemus juſtitiam vel rectum*, as ſome do phantaſy, but rather becauſe it is rarely brought; and then alſo bought dearly enough without ſuch a fine, for that the trial may be by battel to the great hazard of the champion.

The like exemption hath the writ to enquire of a man's death, which alſo, by the twenty-ſixth chapter of that *Magna Charta*, muſt be granted freely, and without giving any thing for it: which laſt I do rather note, becauſe it may be well gathered thereby, that even then all thoſe other writs did lawfully anſwer their due fines: for otherwiſe the like prohibition would have been publiſhed againſt them, as was in this caſe of the inquiſition itſelf.

I ſee no need to maintain the mediocrity and eaſineſs of this laſt ſort of fine, which in lands exceedeth not the tenth part of one year's value, and in goods the two hundreth part of the thing that is demanded by the writ.

Neither has this office of ours * originally to meddle with the fines of any other original writs, than of ſuch only as whereupon a fine or concord may be had and levied; which is commonly the writ of covenant, and rarely any other. For we deal not with the fine of the writ of entry of lands holden in chief, as due upon the original writ itſelf; but only as payable in the nature of a licence for the alienation, for which the third part of the yearly rent is anſwered; as the ſtatute 32 H. VIII. *cap.* 1. hath ſpecified, giving the direction for it; albeit now lately the writs of entry be made parcel of the parcel ferm alſo; and therefore I will here cloſe up the firſt part, and unfold the ſecond.

* *Right*, or ſome word of the like import ſeems to be omitted here.

The ſecond part of this treatiſe.

Before the inſtitution of this ferm and office, no writ of covenant for the levying any final concord, no writ of entry for the ſuffering of any common recovery of lands holden in chief, no doquet for licence to alien, nor warrant for pardon of alienation made, could be purchaſed and gotten without an oath called an affidavit, therein firſt taken either before ſome juſtice of aſſize, or maſter of the chancery, for the true diſcovery of the yearly value of the lands compriſed in every of the ſame: in which doing, if a man ſhall conſider on the one ſide the care and ſeverity of the law, that would not be ſatisfied without an oath; and on the other ſide the aſſurance of the truth to be had by ſo religious an affirmation as an oath is, he will eaſily believe that nothing could be added unto that order, either for the ready diſpatch of the ſubject, or for the uttermoſt advancement of the kings profit. But *quid verba audiam, cum facta videam?* Much peril to the ſwearer, and little good to our ſovereign hath enſued thereof. For on the one ſide the juſtices of aſſize were many times abuſed by their clerks, that preferred the recognitions of final concords taken in their circuit: and the maſters of the chancery were often overtaken by the fraud of ſolicitors and attorneys, that followed their clients cauſes here at Weſtminſter; and on the other ſide light and lewd perſons, eſpecially, that the exactor of the oath did neither uſe exhortation, nor examining of them for taking thereof, were as eaſily ſuborned to make an affidavit for money, as poſt-horſes and hackneys are taken to hire in Canterbury and Dover way: inſomuch that it was uſual for him that dwelt in Southwark, Shoreditch, or Tothil-Street, to depoſe the yearly rent or valuation of lands lying in the north, the weſt, or other remote part of the realm, where either he never was at all, or whence he came ſo young, that little could he tell what the matter meaned: And thus *conſuetudinem peccandi fecit multitudo peccantium.* For the removing of which corruption, and of ſome others whereof I have long ſince particularly heard, it was thought good that the juſtice of aſſize ſhould be entreated to have a more vigilant eye upon their clerks writing; and that one ſpecial maſter of the chancery ſhould be appointed to reſide in this office, and to take the oaths concerning the matters that come hither: who might not only reject ſuch as for juſt cauſes were unmeet to be ſworn, but might alſo inſtruct and admoniſh in the weight of an oath, thoſe others that are fit to paſs and perform it: and foraſmuch as thereby it muſt needs fall out very often, that either there was no man ready and at hand that could

All fines upon oath.

with knowledge and good conſcience undertake the oath, or elſe, that ſuch honeſt perſons as were preſent, and did right well know the yearly value of the lands, would rather chuſe and agree to pay a reaſonable fine without any oath, than to adventure the uttermoſt, which, by the taking of their oath, muſt come to light and diſcovery: It was alſo provided, that the fermour, and the deputies, ſhould have power to treat, compound and agree with ſuch, and ſo not exact any oath at all of them.

How much this ſort of finance hath been increaſed by this new device, I will reſerve (as I have already plotted it) for the laſt part of this diſcourſe: but in the mean while I am to note firſt, that the fear of common perjury, growing by a daily and over-uſual acquaintance with an oath, by little and little razeth out that moſt reverend and religious opinion thereof, which ought to be planted in our hearts, is hereby for a great part cut off and clean removed: then that the ſubject yieldeth little or nothing more now than he did before, conſidering that the money, which was wont to be ſaved by the former corrupt ſwearing, was not ſaved unto him, but loſt to her majeſty and him, and found only in the purſe of the clerk, attorney, ſolicitor, or other follower of the ſuit: and laſtly, that the client, beſides the benefit of retaining a good conſcience in the paſſage of this his buſineſs, hath alſo this good aſſurance, that he is always a gainer, and by no means can be at any loſs, as ſeeing well enough, that if the compoſition be over-hard and heavy for him, he may then, at his pleaſure, relieve himſelf by recourſe to his oath; which alſo is no more than the ancient law and cuſtom of the realm hath required at his hands. And the ſelf-ſame thing is moreover (that I may ſhortly deliver it by the way) not only a ſingular comfort to the executioners of this office, a pleaſant ſeaſoning of all the ſour of their labour and pains, when they ſhall conſider that they cannot be guilty of the doing of any oppreſſion or wrong; but it is alſo a moſt neceſſary inſtruction and document for them, that even as her majeſty hath made them diſpenſators of this her royal favour towards her people, ſo it behoveth them to ſhew themſelves *peregrinatores*, even and equal diſtributers of the ſame; and (as that moſt honourable lord and reverend ſage counſellor, the * late lord Burleigh, late lord treaſurer, ſaid to myſelf) to deal it out with wiſdom and good dexterity towards all the ſorts of her loving ſubjects.

* This paſſage aſcertains the date of this writing

But now that it may yet more particularly appear what is the ſum of this new building, and by what joints and ſinews the ſame is raiſed and knit together, I muſt let you know, that beſides the fermours deputies (which at this day be three in number) and beſides the doctor of whom I ſpake, there is alſo a receiver, who alone handleth the moneys, and three clerks, that be employed ſeverally, as anon you ſhall perceive; and by theſe perſons the whole proceeding in this charge is thus performed.

The part of each officer.

If the recognition or acknowledgment of a final concord upon any writ of covenant finable, (for ſo we call that which containeth lands above the yearly value of forty ſhillings, and all others we term unfinable, be taken by juſtice of aſſize, or by the chief juſtice of the common plea, and the yearly value of thoſe lands be alſo declared by affidavit made before the ſame juſtice; then is the recognition and value, ſigned with the hand-writing of that juſtice, carried by the curſitor in chancery for that ſhire where thoſe lands do lie, and by him is a writ of covenant thereupon drawn and ingroſſed in parchment; which (having the ſame value indorſed on the backſide thereof) is brought, together with the ſaid paper that doth warrant it, into this office: and there firſt the doctor, conferring together the paper and writ, indorſeth his name upon that writ, cloſe underneath the value thereof: then foraſmuch as the valuation thereof is already made, that writ is delivered to the receiver, who taketh the ſum of money that is due, after the rate of that yearly value, and indorſeth the payment thereof upon the ſame writ accordingly: this done, the ſame writ is brought to the ſecond clerk, who entereth it into a ſeveral book, kept only for final writs of covenant, together with the yearly value, and the rate of the money paid, with the name of the party that made the affidavit, and of the juſtice that took it; and at the foot of that writ maketh a ſecret mark of his ſaid entry: laſtly, that

Proceeding upon fines.

writ

writ is delivered to the deputies, who ſeeing that all the premiſſes be orderly performed, do alſo indorſe their own names upon the ſame writ for teſtimony of the money received. Thus paſſeth it from this office to the *cuſtos brevium*, from him to the queen's ſilver, then to the chirographer to be engroſſed, and ſo to be proclaimed in the court. But if no affidavit be already made touching the value, then is the writ of covenant brought firſt to the deputies ready drawn and ingroſſed: and then is the value made either by compoſition had with them without any oath, or elſe by oath taken before the doctor; if by compoſition, then one of the deputies ſetteth down the yearly value (ſo agreed upon) at the foot of the backſide of the writ: which value the doctor cauſeth one of the clerks to write on the top of the backſide of the writ (as the curſitor did in the former) and after that the doctor indorſeth his own name underneath it, and ſo paſſeth it through the hands of the receiver of the clerk that maketh the entry, and of the deputies, as the former writ did. But if the valuation be made by oath taken before the doctor, then cauſeth he the clerk to indorſe that value accordingly, and then alſo ſubſcribeth he his name as before; and ſo the writ taketh the ſame courſe through the office that the others had.

Proceeding upon writs of entry.

And this is the order for writs of covenant that be finable: the like whereof was at the firſt obſerved, in the paſſing of writs of entry of lands holden in chief; ſaving that they be entered into another book, eſpecially appointed for them and for licences and pardons of alienations; and the like is now ſeverally done with the writs of entry of lands not ſo holden: which writs of covenant or entry not finable, thus it is done: an affidavit is made either before ſome ſuch juſtice, or before the ſaid doctor, that the lands, compriſed in the writ, be not worth above forty ſhillings by the year, to be taken. And albeit now here can be no compoſition, ſince the queen is to have no fine at all for unfinable writs, yet doth the doctor indorſe his name, and cauſe the youngeſt, or third clerk, both to make entry of the writ into a third book, purpoſely kept for thoſe only writs, and alſo to indorſe it thus, *finis nullus:* That done, it receiveth the names of the deputies, indorſed as before, and ſo paſſeth hence to the *cuſtos brevium* as the reſt. Upon every doquet for licence of alienation, or warrant for pardon of alienation, the party is likewiſe at liberty either to compound with the deputies, or to make affidavit touching the yearly value; which being known once and ſet down, the doctor ſubſcribeth his name, the receiver taketh the money after the due rate and proportion; the ſecond clerk entereth the doquet or warrant into the book that is proper for them, and for the writs of entry, with a notice alſo, whether it paſſeth by oath or by compoſition: then do the deputies ſign it with their hands, and ſo it is conveyed to the deputy of Mr. Bacon, clerk of the licences, whoſe charge it is to procure the hand of the lord chancellor, and conſequently the great ſeal for every ſuch licence or pardon.

Proceeding upon forfeiture of mean profits.

There yet remaineth untouched, the order that is for the mean profits; for which alſo there is an agreement made here when it is diſcovered that any alienation hath been made of lands holden in chief, without the queen's licence; and albeit that in the other caſes, one whole year's profit be commonly payable upon ſuch a pardon, yet where the alienation is made by deviſe in a laſt will only, the third part of theſe profits is there demandable, by ſpecial proviſion thereof made in the ſtatute 34 H. VIII. c. 5. but yet every way the yearly profits of the lands ſo aliened without licence, and loſt even from the time of the writ of *ſcire facias*, or inquiſition thereupon returned into the exchequer, until the time that the party ſhall come hither to ſue forth his charter of pardon for that offence.

34 H. VIII. c. 5.

In which part the ſubject hath in time gained double eaſe of two weighty burdens, that in former ages did grievouſly preſs him: the one before the inſtitution of this office, and the other ſithence; for in ancient time, and of right, (as it is adjudged 46 E. III. *Fitzh. forfait* 18.) the mean profits were preciſely anſwered after the rate and proportion *per diem*, even from the time of the alienation made. Again, whereas before the receipt of them in this office, they were aſſeſſed by the affidavit from the time of the inquiſition found, or *ſcire facias* returned, now not ſo much at any time as the one half, and many times not the ſixth part of them, is exacted. Here therefore, above the reſt, is great neceſſity

neceſſity to ſhew favour and merciful dealing: becauſe it many times happeneth, that either through the remote dwelling of the party from the lands, or by the negligence or evil practice of under-ſheriffs and their bailiffs, the owner hath incurred the forfeiture of eight or ten years whole profits of his lands, before he cometh to the knowledge of the proceſs that runneth againſt him: other times an alienation made without licence is diſcovered when the preſent owner of the lands is altogether ignorant that his lands be holden in chief at all: other times alſo ſome man concludeth himſelf to have ſuch a tenure by his own ſuing forth of a ſpecial writ of livery, or by cauſeleſs procuring a licence, or pardon, for his alienation, when in truth the lands be not either holden at all of her majeſty, or not holden in chief, but by a mean tenure in ſocage, or by knight's ſervice at the moſt. In which caſes, and the like, if the extremity ſhould be rigourouſly urged and taken, eſpecially where the years be many, the party ſhould be driven to his utter overthrow, to make half a purchaſe, or more, of his own proper land and living.

The chief clerk.

About the diſcovery of the tenure in chief, following of proceſs for ſuch alienation made, as alſo about the calling upon ſheriffs for their accounts, and the bringing in of the parties by ſeizure of their lands therefore the firſt and principal clerk in this office, of whom I had not before any cauſe to ſpeak, is chiefly and in a manner wholly occupied and ſet on work. Now if it do at any time happen (as, notwithſtanding the beſt endeavour, it may and doth happen) that the proceſs, howſoever colourably awarded, hath not hit the very mark whereat it was directed, but haply calleth upon ſome man who is not of right to be charged with the tenure in chief, that is objected againſt; then is he, upon oath and other good evidence, to receive his diſcharge under the hands of the deputies, but with a *quouſque*, and with *ſalvo jure dominae*. Uſage and deceivable manner of awarding proceſs cannot be avoided, eſpecially where a man (having in ſome one place both lands holden in chief, and other lands not ſo holden) alieneth the lands not holden: ſeeing that it cannot appear by record nor otherwiſe, without the expreſs declaration and evidences of the party himſelf, whether they be the ſame lands that be holden, or others. And therefore albeit the party grieved thereby may have ſome reaſon to complain of an untrue charge, yet may he not well call it an unjuſt vexation; but ought rather to look upon that eaſe, which in this kind of proceeding he hath found, where, beſides his labour, he is not to expend above two and twenty ſhillings in the whole charge, in compariſon of that toil, coſt and care, which he in the caſe was wont to ſuſtain by the writ of *certiorari* in the exchequer; wherein, beſides all his labour, it did coſt him fifty ſhillings at the leaſt, and ſometimes twice ſo much before he could find the means to be delivered.

The diſcharge of him that holdeth not in chief when he is ſued erroneouſly.

Thus have I run through the whole order of this practice, in the open time of the term; and that the more particularly and at full, to the end that thereby theſe things enſuing, might the more fully appear, and plainly bewray themſelves: firſt, that this preſent manner of exerciſing of this office hath ſo many teſtimonies, interchangeable warrants, and counter-rolments, whereof each, running through the hands and reſting in the power of ſo many ſeveral perſons, is ſufficient to argue and convince all manner of falſhood; ſo as with a general conſpiracy of all thoſe officers together, it is almoſt impoſſible to contrive any deceit therein: a right, ancient and ſound policy, whereupon both the order of the accounts in the exchequer, and of the affairs of her majeſty's own houſhold, are ſo grounded and built, that the infection of an evil mind in ſome one or twain cannot do any great harm, unleſs the reſt of the company be alſo poiſoned by their contagion. And ſurely, as Cicero ſaid, *Nullum eſt tam deſperatum collegium, in quo non unus e multis ſit ſana mente praeditus.* Secondly, that here is great uſe both of diſcretion, learning, and integrity: of diſcretion, I ſay, for examining the degrees of favour, which ought to be imparted diverſly, and for diſcerning the valuations of lands, not in one place or ſhire, but in each county and corner of the realm; and that not of one ſort or quality, but of every kind, nature, and degree: for a

Policy for avoiding corruption.

Inequality of rates juſtifiable.

taſte whereof, and to the end that all due quality of rates be not ſuddenly charged with infidelity, and condemned for corruption; it is note-worthy, that favour is here ſometimes right worthily beſtowed, not only in a general regard of the perſon, by which every man ought to have a good pennyworth of his own, but more eſpecially alſo and with much diſtinction: for a peer of the realm, a counſellour of ſtate, a judge of the land, an officer that laboureth in furtherance of the tenure, or a poor perſon, are not, as I think, to be meaſured by the common yard, but by the pole of ſpecial grace and diſpenſation. Such as ſerved in the wars have been permitted, by many ſtatutes, to alien their lands of this tenure, without ſuing out of any licence. All thoſe of the chancery have claimed and taken the privilege to paſs their writs without fine; and yet therefore do ſtill look to be eaſily fined: yea, the favourites in court, and as many as ſerve the queen in ordinary, take it unkindly if they have not more than market meaſure.

The perſon.

Again, the conſideration of the place or county where the lands do lie, may juſtly cauſe the rate or valuation to be the more or leſs: for as the writs do commonly report the land by numbers of acres, and as it is allowable, for the eſchewing of ſome dangers, that thoſe numbers do exceed the very content and true quantity of the lands themſelves; ſo in ſome counties they are not much acquainted with admeaſurement by acre: and thereby, for the moſt part, the writs of thoſe ſhires and counties do contain twice or thrice ſo many acres more than the land hath. In ſome places the lands do lie open in common fields, and be not ſo valuable as if they were incloſed: And not only in one and the ſame ſhire, but alſo within the ſelf-ſame lordſhip, pariſh, or hamlet, lands have their divers degrees of value, through the diverſity of their fertility or barrenneſs: wherein how great odds and variety there is, he ſhall ſooneſt find, that will examine it by his own ſkill in whatſoever place that he knoweth beſt.

The place.

Moreover, ſome lands be more chargeable than others are, reſpecting either the tenure, as knight's-ſervice, and the tenure in chief, or in regard of defence againſt the ſea and great rivers; as for their lying near to the borders of the realm, or becauſe of great and continual purveyances that are made upon them, or ſuch like.

And in ſome counties, as namely weſtward, their yearly rents, by which moſt commonly their value to her majeſty is accounted, are not to this day improved at all, the landlords making no leſs gain by fines and incomes, than there is raiſed in other places by inhancement of rents.

The manner and ſorts of the conveyance of the land itſelf, is likewiſe variable, and therefore deſerveth a divers conſideration and value: for in a pardon one whole year's value, together with the mean rates thereof, is due to be paid; which ought therefore to be more favourably aſſeſſed, than where but a third part of one year's rent, as in a licence or writ of entry, or where only a tenth part, as in a writ of covenant, is to be demanded.

The manner of the aſſurance.

A licence alſo and a pardon are to paſs the charges of the great ſeal, to the which the bargain and ſale, the fine and recovery are not ſubject. Sometimes upon one only alienation and change, the purchaſer is to paſs both licence, fine, and recovery, and is for this multiplicity of payments more to be favoured, than he which bringeth but one ſingle pay for all his aſſurance.

Moreover, it is very often ſeen that the ſame land ſuffereth ſundry tranſmutations of owners within one term, or other ſmall compaſs of time; by which return much profit cometh to her majeſty, though the party feel of ſome favour in that doing.

Neither is it of ſmall moment in this part, to behold to what end the conveyances of land be delivered: ſeeing that ſometimes it is only to eſtabliſh the lands in the hands of the owner and his poſterity, without any alienation and change of poſſeſſion to be made: ſometimes a fine is levied only to make good a leaſe for years, or to paſs an eſtate for life, upon which no yearly rent is reſerved; or to grant a reverſion, or remainder, expectant upon a leaſe, or eſtate, that yieldeth no rent. Sometime the land is given in mortgage only, with full

The end of conveyances.

intention

intention to be redeemed within one year, ſix months, or a leſſer time. Many aſſurances do alſo paſs to godly and charitable uſes alone; and it happeneth not ſeldom, that, to avoid the yearly oath, for averment of the continuance of ſome eſtate for life, which is eigne, and not ſubject for forfeiture for the alienation that cometh after it, the party will offer to ſue a pardon uncompelled before the time; in all which ſome mitigation of the uttermoſt value may well and worthily be offered, the rather for that the ſtatute (1 E. III. *cap.* 12.) willeth, that in this ſervice generally, a reaſonable fine ſhall be taken. 1 E. III. *c.* 12.

Error and miſtaking.

Laſtly, error, miſclaim, and forgetfulneſs, do now and then become ſuitors for ſome remiſſion of extream rigour: for I have ſundry times obſerved, that an aſſurance, being paſſed through for a competent fine, hath come back again by reaſon of ſome overſight, and the party hath voluntarily repaſſed it within a while after. Sometime the attorney, or follower of the cauſe, unſkilfully thruſteth into the writ, both the uttermoſt quantity, or more, of the land, and the full rent alſo that is given for it: or elſe ſetteth down an entierty, where but a moiety, a third, or fourth part only was to be paſſed; or cauſeth a bargain and ſale to be enrolled, when nothing paſſed thereby, becauſe a fine had transferred the land before; or elſe enrolleth it within the ſix months; whereas, before the end of thoſe months, the land was brought home to the firſt owner, by repayment of the money for which it was engaged. In which and many other like caſes, the client will rather chuſe to give a moderate fine for the alienation ſo recharged, than to undertake a coſtly plea in the exchequer, for reformation of that which was done amiſs. I take it for a venial fault alſo to vouchſafe a pardon, after the rate and proportion of a licence, to him that without fraud or evil mind hath ſlipped a term or two months, by forgetting to purchaſe his licence.

Much more could I ſay concerning this unblameable inequality of fines and rates: but as I meant only to give an eſſay thereof, ſo not doubting but that this may ſtand, both for the ſatisfaction of ſuch as be indifferent, and for the diſcharge of us that be put in truſt with the ſervice, wherein no doubt a good diſcretion and dexterity ought to be uſed, I reſort to the place where I left, affirming that there is in this employment of ours great uſe of good learning alſo, as well to diſtinguiſh the manifold ſorts of tenures and eſtates; to make conſtruction of grants, conveyances, and wills, and to ſound the validity of inquiſitions, liveries, licences, and pardons: as alſo to decipher the manifold ſlights and ſubtilties that are daily offered to defraud her majeſty in this her moſt ancient and due prerogative, and finally to handle many other matters, which this purpoſe will not permit me to recount at large.

Laſtly, here is need, as I ſaid, of integrity throughout the whole labour and practice, as without the which both the former learning and diſcretion are no better than *armata nequitia*, and nothing elſe but deteſtable craft and double villainy.

And now as you have ſeen that theſe clerks want not their full taſk of labour during the time of the open term, ſo is there for them whereupon to be occupied in the vacation alſo.

For whereas alienations of lands, holden by the tenure of prerogative, be continually made, and that by many and divers ways, whereof all are not, at the firſt, to be found of record; and yet for the moſt part do come to be recorded in the end: the clerks of this office do, in the time of the vacation, repair to the rolls and records, as well of the chancery and king's bench, as of the common pleas and exchequer, whence they extract notes not only of inquiſitions, common recoveries, and indentures of bargains and ſales, that cannot but be of record, but alſo of ſuch feoffments, exchanges, gifts by will, and indentures of covenants to raiſe uſes of lands holden in chief, as are firſt made in the country without matter of record, and come at the length to be found by office, or inquiſition, that is of record; all which are digeſted into apt books, and are then ſent to the remembrancer of the lord treaſurer in the exchequer, to the end that he may make and ſend out proceſſes upon them, as he doth upon the extracts of the final concords of ſuch lands, which the clerk of the fines doth convey unto him.

Thus

Thus it is plain, that this new order by many degrees excelleth the former uſage; as alſo for the preſent advancement of her majeſty's commodity, and for the future profit which muſt enſue by ſuch diſcovery of tenures as were concealed before, by awaking of ſuch as had taken a long ſleep, and by reviving a great many that were more than half dead.

The fees, or allowances, that are termly given to theſe deputies, receiver, and clerks, for recompence of theſe their pains, I do purpoſely pretermit; becauſe they be not certain, but arbitrary, at the good pleaſure of thoſe honourable perſons that have the diſpenſation of the ſame: howbeit hitherto each deputy and the receiver hath received twenty pounds for his travail in each term, only the doctor hath not allowance of any ſum in groſs, but is altogether paid in petty fees, by the party or ſuitor; and the clerks are partly rewarded by that mean alſo, for their entries, diſcharges, and ſome other writings, beſides that termly fee which they are allowed.

Note. But if the deputies take one penny, beſides their known allowance, they buy it at the deareſt price that may be; I mean the ſhipwreck of conſcience, and with the irrecoverable loſs of their honeſty and credit; and therefore ſince it appeareth which way each of theſe hath his reward, let us alſo examine that increaſe of benefit and gain, which is brought to her majeſty by the invention of this office.

At the end of Hilary term 1589, being the laſt open term of the leaſe of theſe profits granted to the late earl of Leiceſter, which alſo was to expire at the feaſt of the Annunciation of the bleſſed virgin Mary 1590, then ſhortly to enſue; the officers above-remembred thought it, for good cauſes, their duties to exhibit to the ſaid right honourable the lord treaſurer a ſpecial declaration of the yearly profits of theſe finances, paid into the hanaper during every of the ſix years before the beginning of the demiſe thereof made to that earl, conferred with the profits thereof that had been yearly taken during the ſix laſt years before the determination of the leaſe. By which it plainly appeared, that in all thoſe firſt ſix years, next before the demiſe, there had been raiſed only 12798 l. 15 s. 7 d. ob. and in theſe laſt ſix years of the demiſe the full ſum of 32160 l. 4 s. 10 d. qu. and ſo in all 19362 l. 2 s. 2 d. ob. qu. more in theſe laſt, than in thoſe former ſix years. But becauſe it may be ſaid, that all this increaſe redounded to the gain of the fermor only, I muſt add, that during all the time of the demiſe, he anſwered 300 l. rent, of yearly increaſe, above all that profit of 2133 l. 2 s. 7 d. qu. which had been yearly and caſually made in the ſixteen years one with another next before: the which, in the time of fourteen years, for ſo long theſe profits have been demiſed by three ſeveral leaſes, did bring 4200 l. to her majeſty's coffers. I ſay yearly; which may ſeem ſtrange, that a caſual and thereby uncertain profit ſhould yearly be all one: but indeed ſuch was the wondrous handling thereof, that the profit was yearly neither more nor leſs to her majeſty, howſoever it might caſually be more or leſs to him that did receive it. For the writs of covenant anſwered year by year 1152 l. 16 s. 8 d. the licences and pardons 934 l. 3 s. 11 d. qu. and the mean rates 46 l. 2 s. in all 2133 l. 2 s. 7 d. qu. without increaſe or diminution.

Moreover, whereas her majeſty did, after the death of the earl, buy of the counteſs, being his executrix, the remanent of the laſt term of three years in thoſe profits, whereof there were only then ſix terms, that is, about one year and an half, to come, paying for it the ſum of 3000 l. her majeſty did clearly gain by that bargain the full ſum of 1173 l. 15 s. 8 d. ob. above the ſaid 3000 l. above the rent of 3649 l. 13 s. 10 d. ob. qu. proportionably due for that time, and above all fees and other repriſes. Neither hath the benefit of this increaſe to her majeſty been contained within the bounds of this ſmall office, but hath ſwelled over the banks thereof, and diſplayed itſelf apparently, as well in the hanaper, by the fees of the great ſeal, which yielding 20 s. 4 d. towards her majeſty for every licence and pardon, was eſtimated to advantage her highneſs, during thoſe fourteen years, the ſum of 3721 l. 6 s. ob. qu. more than without that demiſe ſhe was like to have found. As alſo in the court of wards

wards and liveries, and in the exchequer itself: where, by reaſon of the tenures in chief revived through the only labours of theſe officers, both the ſums for reſpect of homage be increaſed, and the profits of wardſhips, primer ſeiſins, ouſter le maine, and liveries, cannot but be much advanced. And ſo her majeſty's ſelf hath, in this particular, gained the full ſum of 8736 l. 5s. 5d. ob. qu. not compriſing thoſe profits in the exchequer and court of wards, the very certainty whereof lieth not in the knowledge of theſe officers, nor accounting any part of that great benefit which the earl and his executrix have made by the demiſes; the which, one year with another, during all the thirteen years and a half, I ſuppoſe to have been 2263 l. or thereabouts; and ſo in all about 27158 l. above all his coſts and expences. The which albeit I do here report only for the juſtification of the ſervice in this place; yet who cannot but ſee withal, how much the royal revenues might be advanced, if but the like good endeavours were ſhewed for her majeſty in the reſt of her finances, as have been found in this office for the commodity of this one ſubject?

The views of all which matter being preſented to the moſt wiſe and princely conſideration of her majeſty, ſhe was pleaſed to demiſe theſe profits and fines for other five years, to begin at the feaſt of the Annunciation 1590, in the thirty-ſecond year of her reign, for the yearly rent formerly reſerved upon the leaſes of the earl; within the compaſs of which five years, expired at the Annunciation 1595, there was advanced to her majeſty's benefit, by this ſervice, the whole ſum of 13013 l. 14s. 1 d. qu. beyond the ancient yearly revenues, which, before any leaſe, were uſually made of theſe finances. To which if there be added 5700 l. for the gain given to her majeſty by the yearly receipt of 300l. in rent, from the firſt demiſe to the earl, until the time of his death, together with the ſum of 1173 l. 15s. 8d. ob. clearly won in thoſe ſix terms bought of the counteſs; then the whole commodity, from the firſt inſtitution of this office, till the end of theſe laſt five years expired at the Annunciation 1595, ſhall appear to be 19887 l. 9s. 9d. ob. qu. To the which ſum alſo if 28550 l. 15s. 6d. ob. qu. which the earl and the counteſs levied hereby, be likewiſe adjoined, then the whole profit taken in theſe nineteen years, that is, from the firſt leaſe, to the end of the laſt, for her majeſty, the earl, and the counteſs, will amount unto 48438 l. 5s. 4d. This labour hitherto thus luckily ſucceeding, the deputies in this office finding by daily proof, that it was weariſome to the ſubject to travel to divers places, and through ſundry hands, for the purſuing of common recoveries, either not holden of her majeſty at all, or but partly holden in chief; and not doubting to improve her majeſty's revenue therein, and that without loſs to any, either private perſon or publick officer, if the ſame might be managed by them jointly with the reſt whereof they had the charge; they found, by ſearch in the hanaper, that the fruits of thoſe writs of entry had not, one year with another, in the ten years next before, exceeded 400 l. by the year. Whereupon they took hold of the occaſion then preſent, for the renewing of the leaſe of the former profits; and moved the lord treaſurer, and Sir John Forteſcue, under-treaſurer and chancellor of the exchequer, to join the ſame in one and the ſame demiſe, and to yield unto her majeſty 500 l. by year therefor; which is 100 l. yearly of increaſe. The which deſire being by them recommended to her majeſty, it liked her forthwith to include the ſame, and all the former demiſed profits, within one entire leaſe, for ſeven years, to begin at the ſaid feaſt of the Annunciation 1597, under the yearly rent of 2933 l. 2s. 7d. qu. Since which time hitherto, I mean to the end of Michaelmas term 1598, not only the proportion of the ſaid increaſed 100 l. but almoſt of one other 100 l. alſo, hath been anſwered to her majeſty's coffers, for thoſe recoveries ſo drawn into the demiſe now continuing.

Thus I have opened both the firſt plotting, the eſpecial practice, and the conſequent profit ariſing by theſe officers: and now if I ſhould be demanded, whether this increaſe of profit were likely to ſtand without fall, or to be yet amended or made more? I would anſwer, that if ſome few things were provided, and ſome others prevented, it is probable enough in mine opinion, that the profit ſhould rather receive acceſſion, than decay.

The things that I wiſh to be provided are theſe: firſt, that by the diligence

of theſe officers, aſſiſted with ſuch other as can bring good help thereunto, a general and careful collection be made of all the tenures in chief; and that the ſame be digeſted by way of alphabet into apt volumes, for every part, or ſhire, of the realm. Then, that every office, or inquiſition, that findeth any tenure in chief, ſhall expreſs the true quantities of the lands ſo holden, even as in ancient time it was wont to be done by way of admeaſurement, after the manner of a perfect extent or ſurvey: whereby all the parts of the tenancy in chief may be wholly brought to light, howſoever in proceſs of time it hath been, or ſhall be torn and diſmembered. For prevention, I wiſh likewiſe, firſt, that ſome good means were deviſed for the reſtraint of making theſe inordinate and covenous leaſes of lands, holden in chief, for hundreds or thouſands of years, now grown ſo bold, that they dare ſhew themſelves in fines, levied upon the open ſtage of the common pleas; by which one man taketh the full profit, and another beareth the empty name of tenancy, to the infinite deceit of her majeſty, in this part of her prerogative. Then, that no alienation of lands holden in chief ſhould be available, touching the freehold or inheritance thereof, but only where it were made by matter of record, to be found in ſome of her majeſty's treaſuries: and laſtly, that a continual and watchful eye be had, as well upon theſe new founden traverſes of tenure, which are not now tried *per patriam*, as the old manner was; as alſo upon all ſuch pleas whereunto the confeſſion of her majeſty's ſaid attorney general is expected: ſo as the tenure of the prerogative be not prejudiced, either by the fraud of counſellors at the law, many of which do bend their wits to the overthrow thereof; or by the greedineſs of clerks and attorneys, that, to ſerve their own gain, do both impair the tenure, and therewithal grow more heavy to the client, in ſo coſtly pleading for diſcharge, than the very confeſſion of the matter itſelf would prove unto him. I may, yet hereunto add another thing, very meet not only to be prevented with all ſpeed, but alſo to be puniſhed with great ſeverity: I mean that colluſion ſet on foot lately, between ſome of her majeſty's tenants in chief, and certain other that have had to do in her highneſs's grants of concealed lands: where, under a feigned concealment of the land itſelf, nothing elſe is ſought but only to make a change of the tenure, which is reſerved upon the grant of thoſe concealments, into that tenure in chief: in which practice there is no leſs abuſe of her majeſty's great bounty, than loſs and hinderance of her royal right. Theſe things thus ſettled, the tenure in chief ſhould be kept alive and nouriſhed; the which, as it is the very root that doth maintain this ſilver ſtem, that by many rich and fruitful branches ſpreadeth itſelf into the chancery, exchequer, and court of wards; ſo, if it be ſuffered to ſtarve, by want of ablaqueation, and other good huſbandry, not only this yearly fruit will much decreaſe from time to time, but alſo the whole body and boughs of that precious tree itſelf will fall into danger of decay and dying.

And now, to conclude therewith, I cannot ſee how it may juſtly be miſliked, that her majeſty ſhould, in a reaſonable and moderate manner, demand and take this ſort of finance: which is not newly out and impoſed, but is given and grown up with the firſt law itſelf, and which is evermore accompanied with ſome ſpecial benefit to the giver of the ſame: ſeeing that lightly no alienation is made, but either upon recompence in money, or land, or for marriage, or other good and profitable conſideration that doth move it: yea rather all good ſubjects and citizens ought not only to yield that gladly of themſelves, but alſo to further it with other men; as knowing that the better this and ſuch like ancient and ſettled revenues ſhall be anſwered and paid, the leſs need her majeſty ſhall have to aſk ſubſidies, fifteens, loans, and whatſoever extraordinary helps, that otherwiſe muſt of neceſſity be levied upon them. And for proof that it ſhall be more profitable to her majeſty, to have every of the ſame to be managed by men of fidelity, that ſhall be waged by her own pay, than either to be letten out to the fermours benefits, or to be left at large to the booty and ſpoil of ravenous miniſters, that have not their reward; let the experiment and ſucceſs be in this one office, and perſuade for all the reſt.

Laus Deo.

THE LEARNED READING OF Mr. FRANCIS BACON,

One of Her MAJESTY's Counſel at Law,

UPON THE

STATUTE OF USES.

BEING

His double Reading to the Hon. SOCIETY OF GRAY's INN,

42 Eliz.

I HAVE choſen to read upon the law of uſes made 27 Hen. VIII. a law, whereupon the inheritances of this realm are toſſed at this day, like a ſhip upon the ſea, in ſuch ſort, that it is hard to ſay which bark will ſink, and which will get to the haven; that is to ſay, what aſſurances will ſtand good, and what will not. Neither is this any lack or default in their pilots the grave and learned judges: but the tides and currents of received errors, and unwarranted and abuſive experience have been ſo ſtrong, as they were not able to keep a right courſe according to the law, ſo as this ſtatute is in great part as a law made in the parliament, held 35 Reginae; for in 37 Reginae, by the notable judgment upon ſolemn arguments of all the judges aſſembled in the exchequer chamber, in the famous caſe between Dillon and Freine, concerning an aſſurance by Chudleigh, this law began to be reduced to a true and ſound expoſition, and the falſe and perverted expoſition, which had continued for ſo many years, though never countenanced by any rule or authority of weight, but only entertained in a popular conceit, and in practice at adventure, grew to be controuled; ſince which time (as it cometh to paſs always upon the firſt reforming of inveterate errors) many doubts, and perplexed queſtions have riſen, which are not yet reſolved, nor the law thereupon ſettled: the conſideration whereof moved me to take the occaſion of performing this particular duty to the houſe, to ſee if I could, by my travel, bring the expoſition thereof to a more general good of the commonwealth.

Herein, though I could not be ignorant of the difficulty of the matter, which he that taketh in hand ſhall ſoon find; or much leſs of my own unableneſs, which I had continual ſenſe and feeling of; yet becauſe I had more means of abſolution than the younger ſort, and more leiſure than the greater ſort, I did think it not impoſſible to work ſome profitable effect; the rather becauſe where an inferior wit is bent and converſant upon one ſubject, he ſhall many times with patience and meditation diſſolve and undo many of the knots, which a greater wit, diſtracted with many matters, would rather cut in two than unknit: and at leaſt, if my invention or judgment be too barren, or too weak; yet, by the benefit of other arts, I did hope to diſpoſe, or digeſt, the authorities or opinions which are in caſes of uſe, in ſuch order and method, as they ſhould take light one from another, though they took no light from me. And like to the matter of my reading ſhall my manner be, for my meaning is to revive and recontinue the ancient form of reading, which you may ſee in Mr. Frowicke's upon the prerogative, and all other readings of ancient time, being of leſs oſtentation and more fruit, than the manner lately accuſtomed: for the uſe then was, ſubſtantially to expound the ſtatutes, by grounds, and diverſities; as you ſhall find the readings ſtill to run upon caſe of the like law, and contrary law; whereof each one includes the learning of a ground, the other the learning of a difference: and not to ſtir conciſe and ſubtle doubts, or to contrive a multitude of tedious and intricate caſes, whereof all, ſaving one, are buried, and the greater part of that one caſe which is taken, is commonly nothing

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to the matter in hand; but my labour ſhall be in the ancient courſe, to open the law upon doubts, and not to open doubts upon this law.

EXPOSITIO STATVTI.

THE expoſition of this ſtatute conſiſts, upon the matter without the ſtatute: upon the matter within the ſtatute.

Three things are to be conſidered concerning this ſtatute, and all other ſtatutes, which are helps and inducements to the right underſtanding of any ſtatute, and yet are no part of the ſtatute itſelf.

1. The conſideration of the ſtatute at the common law.

2. The conſideration of the miſchief which the ſtatute intendeth to redreſs, as alſo any other miſchief, which an expoſition of the ſtatute this way or that way may breed.

3. Certain maxims of the common law, touching expoſition of ſtatutes.

Having therefore framed ſix diviſions, according to the number of readings upon the ſtatute itſelf, I have likewiſe divided the matter without the ſtatute into ſix introductions or diſcourſes, ſo that for every day's reading I have made a triple proviſion.

1. A preface, or introduction.

2. A diviſion upon the law itſelf.

3. A few brief caſes, for exerciſe and argument.

The laſt of which I would have forborn; and, according to the ancient manner, you ſhould have taken ſome of my points upon my diviſions, one, two, or more, as you ſhould have thought good; ſave that I had this regard, that the younger ſort of the bar were not ſo converſant in matters upon the ſtatutes; and for that cauſe only I have interlaced ſome matters at the common law, that are more familiar within the books.

1. The firſt matter I will diſcourſe unto you, is the nature and definition of an uſe, and its inception and progreſſion before the ſtatute.

2. The ſecond diſcourſe ſhall be of the ſecond ſpring of this tree of uſes ſince the ſtatute.

3. The third diſcourſe ſhall be of the eſtate of the aſſurances of this realm at this day upon uſes, and what kind of them is convenient and reaſonable, and not fit to be touched, as far as ſenſe of law and natural conſtruction of the ſtatute will give leave; and what kind of them is convenient and meet to be ſuppreſſed.

4. The fourth diſcourſe ſhall be of certain rules and expoſitions of laws applied to this preſent purpoſe.

5. The fifth diſcourſe ſhall be of the beſt courſe to remedy the ſame inconveniencies now a-foot, by conſtruction of the ſtatute, without offering violence to the letter or ſenſe.

6. The ſixth and laſt diſcourſe ſhall be of the beſt courſe to remedy the ſame inconveniencies, and to declare the law by act of parliament: which laſt I think good to reſerve, and not to publiſh.

THE nature of a uſe is beſt diſcerned by conſidering what it is not, and then what it is; for it is the nature of all human ſcience and knowledge to proceed moſt ſafely, by negative and excluſive, to what is affirmative and incluſive.

Firſt, uſe is no right, title, or intereſt in law; and therefore maſter attorney, who read upon this ſtatute, ſaid well, that there are but two rights: *Jus in re: Jus ad rem.* The one is an eſtate, which is *Jus in re*; the other a demand, which is *Jus ad rem*: but a uſe is neither; ſo that in 24 H. VIII. it is ſaid that the ſaving of the ſtatute of 1 R. III. which ſaveth any right or intereſt of intails, muſt be underſtood of intails of the poſſeſſion, and not of the part of the uſe, becauſe a uſe is no right nor intereſt. So again, you ſee, Littleton's conceit, that an uſe ſhould amount to a tenancy at will, whereupon a releaſe might well inure, becauſe of privity, is controuled by 4 and 5 H. VII. and divers other books, which ſay that *ceſtuy que uſe* is puniſhable in an action of treſpaſs towards the feoffees; only 5 H. V. ſeemeth to be at ſome diſcord with other books, where it is admitted for law, that if there be *ceſtuy que uſe* of an advowſon, and he be out-lawed in a perſonal action,

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the King ſhould have the preſentment; which caſe Maſter Evans, in the argument of Chudleigh's caſe, did ſeem to reconcile thus: where *ceſtuy que uſe*, being out-lawed, had preſented in his own name, there the King ſhould remove his incumbent; but no ſuch thing can be collected upon that book; and therefore I conceive the error grew upon this, that becauſe it was generally thought, that a uſe was but a pernancy of profits; and then again becauſe the law is, that, upon outlawries upon perſonal actions, the King ſhall have the pernancy of profits, they took that to be one and the ſelf-ſame thing which *ceſtuy que uſe* had, and which the King was entitled unto: which was not ſo; for the King had remedy in law for his pernancy of profits, but *ceſtuy que uſe* had none. The books go farther, and ſay, that a uſe is nothing, as in 2 H. VII. *det fuit port*, and counted *ſur leas* for years rendring rent, *etc.* The defendant pleaded in bar, that the plaintiff *nihil habuit tempore dimiſſionis*: the plaintiff made a ſpecial replication, and ſhewed that he had an uſe, and iſſue joined upon that; wherefore it appeareth, that if he had taken iſſue upon the defendant's plea, it ſhould have been found againſt him. So again in 4 Reginae, in the caſe of the Lord Sands, the truth of the caſe was a fine levied by *ceſtuy que uſe* before the ſtatute, and this coming in queſtion ſince the ſtatute upon an averment by the plaintiff *quod partes finis nihil habuerunt*, it is ſaid that the defendant may ſhew the ſpecial matter of the uſe, and it ſhall be no departure from the firſt pleading of the fine; and it is ſaid farther that the averment given in 4 H. VII. *quod partes finis nihil habuerunt, nec in poſſeſſione, nec in uſu*, was ouſted upon this ſtatute of 27 H. VIII. and was no more now to be accepted: but yet it appears, that if iſſue had been taken upon the general averment, without the ſpecial matter ſhewed, it ſhould have been found for him that took the averment, becauſe a uſe is nothing. But theſe books are not to be taken generally or groſly; for, we ſee in the ſame books, when an uſe is ſpecially alledged, the law taketh knowledge of it; but the ſenſe of it is, that uſe is nothing for which remedy is given by the courſe of the common law, ſo as the law knoweth it, but protects it not; and therefore when the queſtion cometh, whether it hath any being in nature or conſcience, the law accepteth of it; and therefore Littleton's caſe is good law, that he which hath but forty ſhillings free-hold in uſe, ſhall be ſworn in an inqueſt, for it is ruled *ſecundum dominium naturale*, and not *ſecundum dominium legitimum, nam natura dominus eſt, quia fructum ex re percipit.* And ſo no doubt upon ſubſidies and taxes *ceſtuy que uſe* ſhould be valued as an owner: ſo likewiſe if *ceſtuy que uſe* had releaſed his uſe unto the feoffee for ſix pound, or contracted with a ſtranger for the like ſum, there is no doubt but it is a good condition or contract whereon to ground an action upon the caſe: for money for releaſe of a ſuit in the chancery is a good *quid pro quo*; therefore to conclude, though a uſe be nothing in law to yield remedy by courſe of law, yet it is ſomewhat in reputation of law and conſcience: for that may be ſomewhat in conſcience which is nothing in law, like as that may be ſomething in law which is nothing in conſcience; as, if the feoffees had made a feoffment over in fee, *bona fide*, upon good conſideration, and, upon a *ſubpoena* brought againſt them, they pleaded this matter in chancery, this had been nothing in conſcience, not as to diſcharge them of damages.

A ſecond negative fit to be underſtood is, that a uſe is no covin, nor is it a colluſion, as the word is now uſed; for it is to be noted, that where a man doth remove the ſtate and poſſeſſion of land, or goods, out of himſelf unto another upon truſt, it is either a ſpecial truſt, or a general truſt.

The ſpecial truſt is either lawful or unlawful.

The ſpecial truſt unlawful is, according to the caſe, provided for by ancient ſtatutes of pernors of the profits; as where it is to defraud creditors, or to get men to maintain ſuits, or to defeat the tenancy to the *praecipe*, or the ſtatute of mortmain, or the lords of their wardſhips, or the like; and thoſe are termed frauds, covins or colluſions.

The ſpecial truſt lawful is, as when I infeoff ſome of my friends, becauſe I am to go beyond the ſeas, or becauſe I would free the land from ſome general ſtatute, or bond, which I am to enter into, or upon intent to be reinfeoffed, or intent to be vouched, and ſo to ſuffer a common recovery, or upon intent that the feoffees ſhall infeoff over a ſtranger, and infinite the like intents and purpoſes, which fall

out in mens dealings and occaſions: and this we call confidence, and the books do call them intents; but where the truſt is not ſpecial, nor tranſitory, but general and permanent, there it is a uſe; and therefore theſe three are to be diſtinguiſhed, and not confounded, the covin, confidence, and uſe.

So as now we are come by negatives to the affirmative, what a uſe is, agreeable to the definition in Plowden, 352. Delamer's caſe, where it is ſaid:

Uſe is a truſt repoſed by any perſon in the terre-tenant, that he may ſuffer him to take the profits, and he that will perform his intent.

But it is a ſhorter ſpeech to ſay, that *Uſus eſt dominium fiduciarium*: Uſe is an ownerſhip in truſt.

So that *uſus et ſtatus, ſive poſſeſſio, potius differunt ſecundum rationem fori, quam ſecundum naturam rei*, for that one of them is in court of law, the other in court of conſcience; and for a truſt, which is the way to an uſe, it is exceeding well defined by a civilian of great underſtanding: *Fides eſt obligatio conſcientiae unius ad intentionem alterius.*

And they have a good diviſion likewiſe of rights: *Jus precarium: Jus fiduciarium: Jus legitimum.*

1. A right in courteſy, for the which there is no remedy at all.
2. A right in truſt, for which there is a remedy only but in conſcience.
3. A right in law.

So much of the nature and definition of an uſe.

It followeth to conſider the parts and properties of an uſe: wherein by the conſent of all books, as it was diſtinctly delivered by Juſtice Walmſley in 36 of Elizabeth:

A truſt conſiſteth upon three parts.

The firſt, that the feoffee will ſuffer the feoffer to take the profits.

The ſecond, that the feoffee upon requeſt of the feoffor, or notice of his will, will execute the eſtates to the feoffor, or his heirs, or any other by his direction.

The third, that if the feoffee be diſſeiſed, and ſo the feoffor diſturbed, the feoffee will re-enter, or bring an action to re-continue the poſſeſſion: ſo that thoſe three, perſiancy of profits, execution of eſtates, and defence of the land, are the three points of truſt.

The properties of an uſe, they are exceeding well ſet forth by Fenner, juſtice, in the ſame caſe; and they be three:

1. Uſes (ſaith he) are created by confidence:
2. Preſerved by privity, which is nothing elſe but a continuance of the confidence, without interruption: and
3. Ordered and guided by conſcience: either by the private conſcience of the feoffee; or the general conſcience of the realm, which is chancery.

The two former of which (becauſe they be matters more thoroughly beaten, and we ſhall have occaſion hereafter to handle them) we will not now dilate upon:

But the third, we will ſpeak ſomewhat of; both becauſe it is a key to open many of the true reaſons, and learnings of uſes, and becauſe it tendeth to decide our great and principal doubts at this day.

Coke ſollicitor, entring into his argument of Chudleigh's caſe, ſaid ſharply and fitly: "I will put never a caſe but it ſhall be of an uſe, for a uſe in law hath no fel-"low;" meaning, that the learning of uſes is not to be matched with other learnings. Anderſon, chief juſtice, in the argument of the ſame caſe, did truly and profoundly controul the vulgar opinion collected upon 5 E. IV. that there might be *poſſeſſio fratris* of a uſe; for he ſaid, that it was no more but that the chancellor would conſult with the rules of law, where the intention of the parties did not ſpecially appear; and therefore the private conceit, which Glanvile, juſtice, cited in the 42 Reginae, in the caſe of Corbet, in the common pleas, of one of Lincolns-Inn, whom he named not, but ſeemed to allow, is not ſound; which was, that a uſe was but a limitation, and did enſue the nature of a poſſeſſion.

This very conceit was ſet on foot in 27 H. VIII. in the Lord Darcie's caſe, in which time they began to heave at uſes; for there, after the realm had many ages together put in ure the paſſage of uſes by will, they began to argue that an uſe was not deviſeable, but that it did enſue the nature of the land; and the ſame year after, this ſtatute was made; ſo that this opinion ſeemeth ever to be a prelude and

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ſorerunner to an act of parliament touching uſes; and if it be ſo meant now, I like it well: but in the mean time the opinion itſelf is to be rejected; and becauſe, in the ſame caſe of Corbet, three reverend judges of the court of common pleas did deliver and publiſh their opinion, though not directly upon the point adjudged, yet *obiter* as one of the reaſons of their judgment, that an uſe of inheritance could not be limited to ceaſe; and again, that the limitation of a new uſe could not be to a ſtranger; ruling uſes merely according to the ground of poſſeſſion; it is worth the labour to examine that learning. By 3 Hen. VII. you may collect, that if the feoffees had been diſſeiſed by the common law, and an anceſtor collateral of *ceſtuy que uſe* had releaſed unto the diſſeiſor, and his warranty had attached upon *ceſtuy que uſe*; yet the chancellor, upon this matter ſhewed, would have no reſpect unto it, to compel the feoffees to execute the eſtate unto the diſſeiſor: for there the caſe being, that *ceſtuy que uſe* in tail having made an aſſurance by fine and recovery, and by warranty which deſcended upon his iſſue, two of the judges held, that the uſe is not extinct; and Bryan and Huſſey, that held the contrary, ſaid, that the common law is altered by the new ſtatute; whereby they admit, that by the common law that warranty will not bind and extinct a right of a uſe, as it will do a right of poſſeſſion; and the reaſon is, becauſe the law of collateral warranty is a hard law, and not to be conſidered in a court of conſcience. In 5 Edw. IV. it is ſaid, that if *ceſtuy que uſe* be attainted, *quaere*, who ſhall have the land, for the lord ſhall not have the land; ſo as there the uſe doth not limitate the poſſeſſion; and the reaſon is, becauſe the lord hath a rent by title; for that is nothing to the *ſubpoena*, becauſe the feoffee's intent was never to advance the lord, but only his own blood; and therefore the *quaere* of the book ariſeth, what the truſt and confidence of the feoffee did tye him to do, as whether he would not ſell the land to the uſe of the feoffee's will, or *in pios uſus?* So favourably they took the intent in thoſe days, as you find in 27 Hen. VI. that if a man had appointed his uſe to one for life, the remainder in fee to another, and *ceſtuy que uſe* for life had refuſed, becauſe the intent appeared not to advance the heir at all, nor him in reverſion, preſently the feoffee ſhould have the eſtate for life of him that refuſed, ſome ways to the behoof of the feoffor. But to proceed in ſome better order towards the diſproof of this opinion of limitation, there be four points wherein we will examine the nature of uſes.

1. The raiſing of them.
2. The preſerving of them.
3. The transferring of them.
4. The extinguiſhing of them.

1. In all theſe four, you ſhall ſee apparently that uſes ſtand upon their own reaſons, utterly differing from caſes of poſſeſſion. I would have one caſe ſhewed by men learned in the law, where there is a deed; and yet there needs a conſideration: as for paroll, the law adjudgeth it too light to give action without conſideration; but a deed ever in law imports a conſideration, becauſe of the deliberation and ceremony in the confection of it: and therefore in 8 Reginae it is ſolemnly argued, that a deed ſhould raiſe an uſe without any other conſideration. In the Queen's caſe a falſe conſideration, if it be of record, will hurt the patent, but want of conſideration doth never hurt it; yet they ſay that a uſe is but a nimble and light thing; and now, contrariwiſe, it ſeemeth to be weightier than any thing elſe: for you cannot weigh it up to raiſe it, neither by deed, nor deed inrolled, without the weight of a conſideration; but you ſhall never find a reaſon of this to the world's end, in the law: But it is a reaſon of chancery, and it is this;

That no court of conſcience will enforce *donum gratuitum*, though the intent appear never ſo clearly, where it is not executed, or ſufficiently paſſed by law; but if money had been paid, and ſo a perſon damnified, or that it was for the eſtabliſhment of his houſe, then it is a good matter in the chancery. So again I would ſee in the law, a caſe where a man ſhall take by a conveyance, be it by deed, livery, or word, that is not party to the grant: I do not ſay that the delivery muſt be to him that takes by the deed, for a deed may be delivery to one

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man to the uſe of another. Neither do I ſay that he muſt be party to the delivery of the deed, for he in the remainder may take though he be not party; but he muſt be party to the words of the grant: here again the caſe of the uſe goeth ſingle, and the reaſon is, becauſe a conveyance in uſe is nothing but a publication of the truſt; and therefore ſo as the party truſted be declared, it is not material to whom the publication be. So much for the raiſing of uſes. Now as to the preſerving of them.

2. There is no caſe in the common law, wherein notice ſimply and nakedly is material to make a covin, or *particeps criminis*; and therefore if the heir which is in by deſcent, infeoff one which had notice of the diſſeiſin, if he were not a *diſſeiſor de facto*, it is nothing: ſo in 33 H. VI. if a feoffment be made upon colluſion, and feoffee makes a feoffment over upon good conſideration, the colluſion is diſcharged, and it is not material if they had notice or no. So as it is put in 14 H. VIII. if a ſale be made in a market overt upon good conſideration, although it be to one that hath notice that they are ſtolen goods, yet the property of a ſtranger is bound; though in the book before remembered 33 H. VI. ſome opine to the contrary, which is clearly no law; ſo in 31 E. III. if aſſets deſcend to the heir, and he alien it upon good conſideration, although it be to one that had notice of the debt, or of the warranty, it is good enough. So 25 Aſſ. p. 1. if a man enter of purpoſe into my lands, to the end that a ſtranger which hath right, ſhould bring his *præcipe* and evict the land, I may enter notwithſtanding any ſuch recovery; but if he enter, having notice that the ſtranger hath right, and the ſtranger likewiſe having notice of his entry, yet if it were not upon confederacy or colluſion between them, it is nothing; and the reaſon of theſe caſes is, becauſe the common law looketh no farther than to ſee whether the act were merely *actus fictus in fraudem legis*; and therefore whereſoever it findeth conſideration given, it diſchargeth the covin.

But come now to the caſe of uſe, and there it is otherwiſe, as it is in 14 H. VIII. and 28 H. VIII. and divers other books; which prove that if the feoffee ſell the land for good conſideration to one that hath notice, the purchaſer ſhall ſtand ſeiſed to the ancient uſe; and the reaſon is, becauſe the chancery looketh farther than the common law, viz. to the corrupt conſcience of him that will deal in the land, knowing it in equity to be another's; and therefore if there were *radix amaritudinis*, the conſideration purgeth it not, but it is at the peril of him that giveth it: ſo that conſideration, or no conſideration, is an iſſue at the common law; but notice, or no notice, is an iſſue in the chancery. And ſo much for the preſerving of uſes.

3. For the transferring of uſes there is no caſe in law whereby an action is transferred, but the *ſubpœna* in caſe of uſe was always aſſignable; nay farther, you find twice 27 H. VIII. fol. 10. pla. 9. and fol. 30. pla. 21. that a right of uſe may be transferred: for in the former caſe Montague maketh the objection, and ſaith, that a right of uſe cannot be given by fine, but to him that hath the poſſeſſion; Fitz-Herbert anſwereth, Yes, well enough; *quaere* the reaſon, ſaith the book.

And in the latter caſe, where *ceſtuy que uſe* was infeoffed by the diſſeiſor of the feoffee, and made a feoffment over, Englefield doubted whether the ſecond feoffee ſhould have the uſe. Fitz-Herbert ſaid, "I marvel you will make a doubt "of it, for there is no doubt but the uſe paſſeth by the feoffment to the ſtranger, "and therefore this queſtion needeth not to have been made." So the great difficulty in 10 Reginae, Delamer's caſe, where the caſe was in effect tenant in tail of an uſe, the remainder in fee; tenant in tail made a feoffment in fee; tenant, by the ſtatute of 1 R. III. and the feoffee infeoffed him in the remainder of the uſe, who made it over; and there queſtion being made, whether the ſecond feoffee ſhould have the uſe in remainder, it is ſaid that the ſecond feoffee muſt needs have the beſt right in conſcience; becauſe the firſt feoffee claimed nothing but in truſt, and the *ceſtuy que uſe* cannot claim it againſt his ſale; but the reaſon is apparent (as was touched before) that a uſe in *eſſe* was but a thing in action, or in ſuit to be brought in court of conſcience, and where the *ſubpœna* was to be brought againſt the feoffee in poſſeſſion to execute the eſtate,

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or againſt the feoffee out of poſſeſſion to recontinue the eſtate, always the *ſubpœna* might be transferred; for ſtill the action at the common law was not ſtir'd but remained in the feoffee; and ſo no miſchief of maintenance or transferring rights.

And if a uſe being but a right may be aſſigned, and paſs'd over to a ſtranger, *a multo fortiori* it may be limited to a ſtranger upon the privity of the firſt conveyance, as ſhall be handled in another place: and as to what Glanvile, juſtice, ſaid, he could never find by any book, or evidence of antiquity, a contingent uſe limited over to a ſtranger; I anſwer, firſt, it is no marvel that you find no caſe before E. IV. his time, of contingent uſes, where there be not ſix of uſes in all; and the reaſon I doubt was, men did chooſe well whom they truſted, and truſt was well obſerved: and at this day, in Ireland, where uſes be in practice, caſes of uſes come ſeldom in queſtion, except it be ſometimes upon the alienations of tenants in tail by fine, that the feoffees will not be brought to execute eſtates, to the diſ-inheritance of ancient blood. But for experience in the conveyance, there was nothing more uſual in *obits*, than to will the uſe of the land to certain perſons and their heirs, ſo long as they ſhall pay the chantry prieſts their wages, and in default of payment to limit the uſe over to other perſons and their heirs; and ſo, in caſe of forfeiture, through many degrees; and ſuch conveyances are as ancient as R. II. his time.

4. Now for determining and extinguiſhing of uſes, I put the caſe of collateral warranty before, and to that the notable caſe of 14 H. VIII. Halfpenny's caſe, where this very point was as in the principal caſe; for a right out of land, and the land itſelf in caſe of poſſeſſion, cannot ſtand together, but the rent ſhall be extinct; but there the caſe is, that the uſe of the land, and the uſe of the rent ſhall ſtand well enough together; for a rent charge was granted by the feoffee to one, that had notice of the uſe, and ruled, that the rent was to the ancient uſe, and both uſes were *in eſſe ſimul et ſemel:* and though Brudenell, chief juſtice, urged the ground of poſſeſſion to be otherwiſe, yet he was over-ruled by the other three juſtices, and Brooke ſaid unto him, he thought he argued much for his pleaſure. And to conclude, we ſee that things may be avoided and determined by the ceremonies and acts, like unto thoſe by which they are created and raiſed; that which paſſeth by livery ought to be avoided by entry; that which paſſeth by grant, by claim; that which paſſeth by way of charge, determineth by way of diſcharge: and ſo a uſe which is raiſed but by a declaration or limitation, may ceaſe by words of declaration or limitation, as the civil law ſaith, *in his nil magis conſentaneum eſt, quam ut iiſdem modis res diſſolvantur, quibus conſtituantur.*

For the inception and progreſſion of uſes, I have for a precedent in them ſearched other laws, becauſe ſtates and common-wealths have common accidents; and I find in the civil law, that that which cometh neareſt in name to the uſe, is nothing like in matter, which is *uſus fructus:* for *uſus fructus et dominium* is with them, as with us particular tenancy and inheritance. But that which reſembleth the uſe moſt is *fidei-commiſſum*, and therefore you ſhall find in *Juſtinian lib.* 2. that they had a form in teſtaments, to give inheritance to one to the uſe of another, *Haeredem conſtituo Caium; rogo autem te, Caie, ut haereditatem reſtituas Seio.* And the text of the civilians ſaith, that for a great time if the heir did not as he was required, *ceſtuy que uſe* had no remedy at all, until about the time of Auguſtus Cæſar there grew in cuſtom a flattering form of truſt, for they penned it thus: *Rogo te per ſalutem Auguſti*, or *per fortunam Auguſti, etc.* Whereupon Auguſtus took the breach of truſt to ſound in derogation of himſelf, and made a reſcript to the *praetor* to give remedy in ſuch caſes; whereupon within the ſpace of a hundred years, theſe truſts did ſpring and ſpeed ſo faſt, as they were forced to have a particular chancellor only for uſes, who was called *praetor fidei-commiſſarius*; and not long after, the inconvenience of them being found, they reſorted unto a remedy much like unto this ſtatute; for by two decrees of ſenate, called *ſenatus-conſultum Trebellianum et Pegaſianum*, they made *ceſtuy que uſe* to be heir in ſubſtance. I have ſought likewiſe, whether there be any thing which maketh with them in our law, and I find that Periam, chief baron, in the argument of Chudleigh's caſe compareth them to copyholders, and aptly for many reſpects.

Inſt. l. 2. Tit. 2.

Firſt, becauſe as an uſe ſeemeth to be an hereditament in the court of chancery, ſo the copy-hold ſeemeth to be an hereditament in the lord's court.

Secondly, this conceit of limitation hath been troubleſome in copy-holders as well as in uſes; for it hath been of late days queſtioned, whether there ſhould be dowers, tenancies by the courteſy, intails, diſcontinuances, and recoveries of copyholds, in the nature of inheritances, at the common law; and ſtill the judgments have weighed, that you muſt have particular cuſtoms in copyholds, as well as particular reaſons of conſcience in uſe, and the limitation rejected.

And thirdly, becauſe they both grew to ſtrength and credit by degrees: for the copy-holder firſt had no remedy at all againſt the lord, and were as tenancy at will. Afterwards it grew to have remedy in chancery, and afterwards againſt their lords by treſpaſs at the common law; and now, laſtly, the law is taken by ſome, that they have remedy by *ejectione firmae*, without a ſpecial cuſtom of leaſing. So no doubt in uſes: At the firſt the chancery made queſtion to give remedy, until uſes grew more general, and the chancery more eminent; and then they grew to have remedy in conſcience: but they could never obtain any manner of remedy at the common law, neither againſt the feoffee, nor againſt ſtrangers; but the remedy againſt the feoffee was left to the *ſubpoena*; and the remedy againſt ſtrangers to the feoffee.

Now for the caſes whereupon uſes were put in practice, Coke in his reading doth ſay well, that they were produced ſometimes for fear, and many times for fraud. But I hold that neither of theſe caſes were ſo much the reaſons of uſes, as another reaſon in the beginning, which was, that lands by the common law of England were not teſtamentary, or deviſeable; and of late years, ſince the ſtatute, the caſe of the conveyance for ſparing of purchaſes, and execution of eſtates; and now laſt of all an exceſs of evil in mens minds, affecting to have the aſſurance of their eſtate and poſſeſſion to be revocable in their own times, and irrevocable after their own times.

Now for the commencement and proceeding of them, I have conſidered what it hath been in courſe of common law, and what it hath been in courſe of ſtatute. For the common law the conceit of Shelley in 24 H. VIII. and of Pollard in 27 H. VIII. ſeemeth to me to be without ground, which was, that the uſe ſucceeded the tenure: for after that the ſtatute of *Quia emptores terrarum*, which was made 18 E. I. had taken away the tenure between the feoffor and the feoffee, and left it to the lord paramount; they ſaid that the feoffment being then merely without conſideration, ſhould therefore intend an uſe to the feoffor; which cannot be; for by that reaſon, if the feoffment before the ſtatute had been made *tenendum de capitalibus dominis*, as it muſt be, there ſhould have been an uſe unto the feoffor before that ſtatute. And again, if a grant had been made of ſuch things as conſiſt not in tenure, as advowſons, rents, villains, and the like, there ſhould have been a uſe of them, wherein the law was quite contrary; for after the time that uſes grew common, it was nevertheleſs a great doubt whether things that did lie in grant, did not carry a conſideration in themſelves becauſe of the deed.

And therefore I do judge that the intendment of a uſe to the feoffor, where the feoffment was made without conſideration, grew long after, when uſes waxed general; and for this reaſon, becauſe when feoffments were made, and that it reſted doubtful whether it were in uſe or in purchaſe, becauſe purchaſes were things notorious, and uſes were things ſecret, the Chancellor thought it more convenient to put the purchaſer to prove his conſideration, than the feoffor and his heirs to prove the truſt; and ſo made the intendment towards the uſe, and put the proof upon the purchaſer.

And therefore as uſes were at the common law in reaſon, for whatſoever is not by ſtatute, nor againſt law, may be ſaid to be at the common law; and both the general truſt and the ſpecial, were things not prohibited by the law, though they were not remedied by the law; ſo the experience and practice of uſes were not ancient; and my reaſons why I think ſo, are theſe.

Firſt, I cannot find in any evidence before king R. II. his time, the clauſe *ad opus et uſum*, and the very Latin of it ſavoureth of that time; for in ancient time,

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about Edw. I. his time, and before, when lawyers were part civilians, the Latin phraſe was much purer, as you may ſee by Bracton's writing, and by ancient patents and deeds, and chiefly by the regiſter of writs, which is good Latin; wherein this phraſe (*ad opus et uſum*) and the words (*ad opus*) is a barbarous phraſe, and like enough to be the penning of ſome chaplain that was not much paſt his grammar, where he had found *opus et uſus* coupled together, and that they did govern an ablative caſe; as they do indeed ſince this ſtatute, for they take away the land and put them into a conveyance.

Secondly, I find in no private act of attainder, the clauſe of forfeiture of lands, the words "which he hath in poſſeſſion or in uſe," until Ed. IV's reign.

Thirdly, I find the word "*uſe*" in no ſtatute until 7 Rich. II. *cap.* 11. *Of proviſors*, and in 15 Rich. *Of mortmain.*

Fourthly, I collect out of Choke's ſpeech in 8 Edw. IV. where he ſaith, that by the advice of all the judges it was thought that the *ſubpoena* did not lie againſt the heir of the feoffee which was in by law, but *ceſtuy que uſe* was driven to his bill in parliament, that uſes even in that time were but in their infancy; for no doubt but at the firſt the chancery made difficulty to give remedy at all, and did leave it to the particular conſcience of the feoffee: but after the chancery grew abſolute, as may appear by the ſtatute of 13 H. VI. that complainants in chancery ſhould enter into bond to prove their ſuggeſtions, which ſheweth that the chancery at that time began to embrace too far, and was uſed for vexation; yet nevertheleſs it made ſcruple to give remedy againſt the heir being in by act in law, though he were privy; ſo that it cannot be that uſes had been of any great continuance when they made that a queſtion: as for the caſe of *matrimonii praelocuti*, it hath no affinity with uſes; for whereſoever there was remedy at the common law by action, it cannot be intended to be of the nature of a uſe.

And for the book commonly vouched of 8 *Aſſ.* where Earl calleth the poſſeſſion of a conuzee upon a fine levied by conſent and entry in *autre droit*, and 44 of E. III. where there is mention of the feoffors that ſued by petition to the King, they be but implications of no moment. So as it appeareth the firſt practice of uſes was about Richard II. his time; and the great multiplying and overſpreading of them was partly during the wars in France, which drew moſt of the nobility to be abſent from their poſſeſſions; and partly during the time of the trouble and civil war between the two houſes about the title of the crown.

Now to conclude the progreſſion of uſes in courſe of ſtatues, I do note three ſpecial points.

1. That a uſe had never any force at all, at the common law, but by ſtatute law.

2. That there was never any ſtatute made directly for the benefit of *ceſtuy que uſe*, as that the deſcent of an uſe ſhould toll an entry, or that a releaſe ſhould be good to the pernor of the profits, or the like; but always for the benefit of ſtrangers and other perſons againſt *ceſtuy que uſe*, and his feoffees: for though by the ſtatute of Richard III. he might alter his feoffees, yet that was not the ſcope of the ſtatute, but to make good his aſſurance to other perſons, and the other came in *ex obliquo.*

3. That the ſpecial intent unlawful and covinous was the original of uſes, though after it induced to the lawful intent general and ſpecial; for 30 Edward III. is the firſt ſtatute I find wherein mention is made of the taking of profits by one, where the eſtate in law is in another.

For as to the opinion in 27 Hen. VIII. that in caſe of the ſtatute of Marlebridge, the feoffees took the profits, it is but a conceit: for the law is this day, that if a man infeoff his eldeſt ſon, within age, and without conſideration, although the profits be taken to the uſe of the ſon yet it is a feoffment within the ſtatute. And for the ſtatute *De religioſis* 7 Edward I. which prohibits generally that religious perſons ſhould not purchaſe *arte vel ingenio*, yet it maketh no mention of a uſe, but it ſaith *colore donationis, termini, vel alicujus tituli*, reciting there three forms of conveyances, the gift, the long leaſe, and feigned recovery; which gift cannot be underſtood of a gift to a ſtranger to their uſe, for that came to be holpen by 15 Richard II. long after.

But to proceed, in 5 Edward III. a ſtatute was made for the relief of creditors againſt ſuch as made covinous gifts of their lands and goods, and conveyed their bodies into ſanctuaries, there living high upon other goods; and therefore that ſtatute made their lands liable to their creditors executions in that particular caſe, if they took the profits. In 1 Richard II. a ſtatute was made for relief of thoſe as had right of action, againſt thoſe as had removed the tenancy of the *praecipe* from them ſometimes by infeoffing great perſons, for maintenance; and ſometimes by ſecret feoffments to others, whereof the defendants could have no notice; and therefore the ſtatute maketh the recovery good in all actions againſt the firſt feoffors as they took the profits, and ſo as the defendants bring their action within a year of their expulſion. In 2 Richard II. *cap.* 3. *ſeſſion* 2. an imperfection of the ſtatute of 50 Edward III. was holpen; for whereas the ſtatute took no place, but where the defendant appeared, and ſo was fruſtrated, the ſtatute giveth upon proclamation made at the gate of the place privileged, that the land ſhould be liable without appearance.

In 7 R. II. a ſtatute was made for the reſtraint of aliens, to take any benefices, or dignities eccleſiaſtical, or farms, or adminiſtration to them, without the King's ſpecial licence, upon pain of the ſtatute of proviſors: which being remedied by a former ſtatute, where the alien took it to his own uſe; it is by that ſtatute remedied, where the alien took it to the uſe of another, as it is ſaid in the book; though I gueſs, that if the record were ſearched, it ſhould be, if any other purchaſed to the uſe of an alien, and that the words "or to the uſe of "another" ſhould be "or any other to his uſe." In 15 Rich. II. *cap.* 5. a ſtatute was made for the relief of lords againſt mortmain, where feoffments were made to the uſe of corporations; and an ordinance made that for feoffments paſt, the feoffees ſhould, before a day, either purchaſe licence to amortiſe them, or alien them to ſome other uſe, or other feoffments to come, or they ſhould be within the ſtatute of mortmain. In 4 Hen. IV. *cap.* 7. the ſtatute of 1 Richard II. is enlarged in the limitation of time; for whereas the ſtatute did limit the action to be brought within the year of the feoffment, this ſtatute in caſe of a diſſeiſin extends the time to the life of the diſſeiſor; and in all other actions, leaves it to the year from the time of the action grown. In 11 Henry VI. *cap* 3. that ſtatute of 4 Henry IV. is declared, becauſe the conceit was upon the ſtatute, that in caſe of diſſeiſin the limitation of the life of the diſſeiſor went only to the aſſiſe of *novel diſſeiſin*, and to no other action; and therefore that ſtatute declareth the former law to extend to all other actions, grounded upon *novel diſſeiſin*. In 11 Henry VI. *cap.* 5. a ſtatute was made for relief of him in remainder againſt particular tenants, for lives, or years, that aſſigned over their eſtates, and took the profits, and then committed waſte againſt them; therefore this ſtatute giveth an action of waſte, being pernors of the profits. In all this courſe of ſtatutes no relief is given to purchaſers, that come in by the party, but to ſuch as come in by law, as defendants in *praecipe's*, whether they be creditors, diſſeiſors, or leſſors, and that only in caſe of mortmain: and note alſo, that they be all in caſes of ſpecial covinous intents, as to defeat executions, tenancy to the *praecipe*, and the ſtatute of mortmain, or proviſors. From 11 Henry VI. to 1 R. III. being the ſpace of fifty years, there is a ſilence of uſes in the ſtatute book, which was at that time, when, no queſtion, they were favoured moſt. In 1 Richard III. *cap.* 1. cometh the great ſtatute for relief of thoſe that come in by the party, and at that time an uſe appeareth in his likeneſs; for there is not a word ſpoken of taking the profits, to deſcribe a uſe by, but of claiming to a uſe; and this ſtatute ordained, that all gifts, feoffments, grants, *etc.* ſhall be good againſt the feoffors, donors and grantors, and all other perſons claiming only to their uſe; ſo as here the purchaſer was fully relieved, and *ceſtuy que uſe* was *obiter* enabled to change his feoffees; becauſe there were no words in the ſtatute of feoffments, grants, *etc.* upon good conſideration; but generally in Henry VII's time, new ſtatutes were made for further help and remedy to thoſe that came in by act in law; as 1 Henry VII. *cap.* 1. a *formedon* is given without limitation of time againſt *ceſtuy que uſe*; and *obiter*, becauſe they make him a tenant, they give him advantage

of

of a tenant, as of age, and voucher: *quaere* 4 Henry VII. 17. the wardſhip is given to the lord of the heir of *ceſtuy que uſe*, dying, and no will declared, is given to the lord, as if he had died ſeiſed in demeſne, and action of waſte given to the heir againſt the guardian, and damages, if the lord were barr'd in his writ of ward; and relief is likewiſe given unto the lord, if the heir holding the knight's ſervice be of full age. In 19 Hen. VII. *cap.* 15. there is relief given in three caſes, firſt to the creditors upon matters of record, as upon recognizance, ſtatute, or judgment, whereof the two former were not aided at all by any ſtatute: and the laſt was aided by a ſtatute of 50 E. III. and 2 R. II. only in caſe of ſanctuary men. Secondly, to the lords in ſocage for their relief, and herriots upon death, which was omitted in the 4 Henry VII. and laſtly to the lords of villains, upon a purchaſe of their villains in uſe. In 23 Henry VIII. *cap.* 10. a further remedy was given in a caſe like unto the caſe of mortmain; for in the ſtatute of 15 Richard II. remedy was given where the uſe came *ad manum mortuam*, which was when it came to ſome corporation: now when uſes were limited to a thing, act, or work, and to a body, as to the reparation of a church, or an abbot, or to a guild, or fraternities as are only in reputation, but not incorporate, as to pariſhes; or ſuch guilds or fraternities as are only in reputation, but not incorporate, that caſe was omitted, which by this ſtatute is remedied, not by way of giving entry unto the lord, but by way of making the uſe utterly void; neither doth the ſtatute expreſs to whoſe benefit the uſe ſhall be made void, either the feoffer, or feoffee, but leaveth it to law, and addeth a *proviſo*, that uſes may be limited twenty years from the gift, and no longer.

This is the whole courſe of ſtatute law, before this ſtatute, touching uſes. Thus have I ſet forth unto you the nature and definition of an uſe, the differences and truſt of an uſe, and the parts and qualities of it; and by what rules and learnings uſes ſhall be guided and ordered: by a precedent of them in our laws, the cauſes of the ſpringing and ſpreading of uſes, the continuance of them, and the proceedings that they have had both in common law and ſtatute law; whereby it may appear, that a uſe is no more but a general truſt when any one will truſt the conſcience of another better than his own eſtate and poſſeſſion, which is an accident or event of human ſociety, which hath been, and will be in all laws, and therefore was at the common law, which is common reaſon. Fitz-Herbert ſaith in the 14 H. VIII. common reaſon is common law, and not conſcience; but common reaſon doth define that uſes ſhould be remedied in conſcience, and not in courts of law, and ordered by rules in conſcience, and not by ſtreight rules of law; for the common law hath a kind of a rule and ſurvey over the chancery, to determine what belongs to the chancery. And therefore we may truly conclude, that the force and ſtrength that a uſe had or hath in conſcience, is by common law; and the force that it had or hath by common law, is only by ſtatutes.

Now followeth in time and matter, the conſideration of this ſtatute, which is of principal labour; for thoſe former conſiderations which we have handled ſerve but for introduction.

This ſtatute, as it is the ſtatute which of all others hath the greateſt power and operation over the heritages of the realm, ſo howſoever it hath been by the humour of the time perverted in expoſition, yet in itſelf is moſt perfectly and exactly conceived and penned of any law in the book. 'Tis induced with the moſt declaring and perſuading preamble, 'tis conſiſting and ſtanding upon the wiſeſt and fitteſt ordinances, and qualified with the moſt foreſeeing and circumſpect ſavings and proviſoes: and laſtly 'tis the beſt ponder'd in all the words and clauſes of it of any ſtatute that I find; but before I come to the ſtatute it ſelf, I will note unto you three matters of circumſtance.

1. The time of the ſtatute. 2. The title of it. 3. The precedent or pattern of it.

For the time of it was in 27 Hen. VIII. when the King was in full peace, and a wealthy and flouriſhing eſtate, in which nature of time men are moſt careful of their poſſeſſions; as well becauſe purchaſers are moſt ſtirring, as again, becauſe the purchaſer when he is full, is no leſs careful of his aſſurance to his chil-

dren, and of diſpoſing that which he hath gotten, than he was of his bargain for the compaſſing thereof.

About that time the realm likewiſe began to be enfranchiſed from the tributes of Rome, and the poſſeſſions that had been in mortmain began to ſtir abroad; for this year was the ſuppreſſion of the ſmaller houſes of religion, all tending to plenty, and purchaſing: and this ſtatute came in conſort with divers excellent ſtatutes, made for the kingdom in the ſame parliament; as the reduction of Wales to a more civil government, the re-edifying of diverſe cities and towns, the ſuppreſſing of depopulation and incloſures.

For the title, it hath one title in the roll, and another in courſe of pleading. The title in the roll is no ſolemn title, but an act entitled, an act expreſſing an order for uſes and wills; the title in courſe of pleading is, *Statutum de uſibus in poſſeſſionem transferendis:* wherein Walmſly juſtice noted well 4° *Reginae*, that if a man look to the working of the ſtatute, he would think that it ſhould be turned the other way, *de poſſeſſionibus ad uſus transferendis*; for that is the courſe of the ſtatute, to bring poſſeſſion to the uſe. But the title is framed not according to the work of the ſtatute, but according to the ſcope and intention of the ſtatute, *nam quod primum eſt in intentione, ultimum eſt in operatione.* The intention of the ſtatute by carrying the poſſeſſion to the uſe, is to turn the uſe to a poſſeſſion; for the words are not *de poſſeſſionibus ad uſus transferendis*; and as the grammarian ſaith, *praepoſitio (ad) denotat notam actionis, ſed præpoſitio (in) cum accuſativo denotat notam alterationis:* and therefore Kingſmill juſtice in the ſame caſe ſaith, that the meaning of the ſtatute was, to make a tranſubſtantiation of the uſe into a poſſeſſion. But it is to be noted, that titles of acts of parliament ſeverally came in but in the 5 Hen. VIII. for before that time there was but one title of all the acts made in one parliament; and that was no title neither, but a general preface of the good intent of the King, tho' now it is parcel of the record.

For the precedent of this ſtatute upon which it is drawn, I do find by the firſt Richard III. whereupon you may ſee the very mould whereon this ſtatute was made, that the ſaid King having been infeoffed (before he uſurped) to uſes, it was ordained that the land whereof he was jointly infeoffed ſhould be as if he had not been named; and where he was ſolely infeoffed, it ſhould be in *ceſtuy que uſe*, in eſtate, as he had the uſe.

Now to come to the ſtatute itſelf, the ſtatute conſiſteth, as other laws do, upon a preamble, the body of the law, and certain ſavings, and proviſoes. The preamble ſetteth forth the inconveniencies, the body of the law giveth the remedy, and the ſavings and proviſoes take away the inconveniences of the remedy. For new laws are like the apothecaries drugs, though they remedy the diſeaſe, yet they trouble the body; and therefore they uſe to correct with ſpices: ſo it is not poſſible to find a remedy for any miſchief in the commonwealth, but it will beget ſome new miſchief; and therefore they ſpice their laws with proviſoes to correct and qualify them.

The preamble of the law was juſtly commended by Popham chief juſtice in 36 *Reginae*, where he ſaith, that there is little need to ſearch and collect out of caſes, before this ſtatute, what the miſchief was which the ſcope of the ſtatute was to redreſs; becauſe there is a ſhorter way offered us, by the ſufficiency and fulneſs of the preamble, and therefore it is good to conſider it, and ponder it throughly.

The preamble hath three parts.

Firſt, a recital of the principal inconveniencies, which is the root of all the reſt.

Secondly, an enumeration of divers particular inconveniencies, as branches of the former.

Thirdly, a taſte or brief note of the remedy that the ſtatute meaneth to apply. The principal inconvenience, which is *radix omnium malorum*, is the diverting from the grounds and principles of the common law, by inventing a mean to transfer lands and inheritances without any ſolemnity, or act notorious: ſo as the whole ſtatute is to be expounded ſtrongly towards the extinguiſhment of all con-

conveyances, whereby the freehold or inheritance may paſs without any new confections of deeds, executions of eſtate or entries, except it be where the eſtate is of privity and dependance one towards the other; in which caſes, *mutatis mutandis*, they might paſs by the rules of the common law.

The particular inconveniencies by the law rehearſed may be reduced into four heads.

1. Firſt, that theſe conveyances in uſe are weak for conſideration.

2. Secondly, that they are obſcure and doubtful for trial.

3. Thirdly, that they are dangerous for want of notice and publication.

4. Fourthly, that they are exempted from all ſuch titles as the law ſubjecteth poſſeſſions unto.

The firſt inconvenience lighteth upon heirs.

The ſecond upon jurors and witneſſes.

The third upon purchaſers.

The fourth upon ſuch as come in by gift in law.

All which are perſons that the law doth principally reſpect and favour.

For the firſt of theſe are three impediments (to the judgment of man) in diſpoſing juſtly and adviſedly of his eſtate.

Firſt, trouble of mind.

Secondly, want of time.

Thirdly, of wiſe and faithful counſel about him.

1. And all theſe three the ſtatute did find to be in the diſpoſition of an uſe by will, whereof followed the unjuſt diſinheriſon of heirs. Now the favour of law unto heirs appeareth in many parts of the law; as the law of deſcent privilegeth the poſſeſſion of the heir, againſt the entry of him that hath right by the law: no man ſhall warrant againſt his heir, except he warrant againſt himſelf, and divers other caſes too long to ſtand upon: and we ſee the ancient law in Glanvill's time was, that the anceſtor could not diſinherit his heir by grant, or other act executed in time of ſickneſs; neither could he alien land which had deſcended unto him, except it were for conſideration of money or ſervice; but not to advance any younger brother without the conſent of the heir.

2. For trials, no law ever took a ſtraiter courſe that evidence ſhould not be perplexed, nor juries inveigled, than the common law of England; as on the other ſide, never law took a more preciſe and ſtrait courſe with juries, that they ſhould give a direct verdict. For whereas in a manner all laws do give the tryers, or jurors (which in other laws are called judges *de facto*) a liberty to give *non liquet*, that is, to give no verdict at all, and ſo the caſe to ſtand abated; our law enforceth them to a direct verdict, general or ſpecial; and whereas other laws accept of plurality of voices to make a verdict, our law enforceth them all to agree in one; and whereas other laws leave them to their own time and eaſe, and to part, and to meet again; our law doth dureſs and impriſon them in the hardeſt manner, without light or comfort, until they be agreed, in conſideration of ſtraitneſs and coercion: it is conſonant, that the law do require in all matters brought to iſſue, that there be full proof and evidence; and therefore if the matter in itſelf be of that ſurety as in ſimple contracts, which are made by parol, without writing, it alloweth wager of law.

In iſſue upon the mere right (which is a thing hardly to diſcern) it alloweth wager of battail to ſpare jurors, if time have wore out the marks and badges of truth: from time to time there have been ſtatutes of limitation, where you ſhall find this miſchief of perjuries often recited; and laſtly, which is the matter in hand, all inheritances could not paſs but by acts overt and notorious, as by deeds, livery, and records.

3. For purchaſers *(bona fide)* it may appear that they were ever favoured in our law, as firſt by the great favour of warranties which were ever for the help of purchaſers: as where by the law in Edw. III.'s time, the diſſeiſee could not enter upon the feoffee in regard of the warranty; ſo again the collateral garranty, which otherwiſe as a hard law, grew in doubt only upon favour of purchaſers; ſo was the binding of fines at the common law, the invention and practice of recoveries, to defeat the ſtatute of intails, and many more grounds

and

and learnings are to be found, which reſpect to the quiet of the poſſeſſion of purchaſers. And therefore though the ſtatute of 1 Rich. III. had provided for the purchaſer in ſome ſort, by enabling the acts and conveyances of *ceſtuy que uſe*; yet nevertheleſs, the ſtatute did not at all diſable the acts or charges of the feoffees: and ſo as Walmſly juſtice ſaid 42 *Reginae*, they played at double hand, for *ceſtuy que uſe* might ſell, and the feoffee might ſell, which was a very great uncertainty to the purchaſer.

4. For the fourth inconvenience towards thoſe that come in by law; conveyances in uſes were like privileged places or liberties; for as there the law doth not run, ſo upon ſuch conveyances the law could take no hold, but they were exempted from all titles in law. No man is ſo abſolute owner of his poſſeſſions, but that the wiſdom of the law doth reſerve certain titles unto others; and ſuch perſons come not in by the pleaſure and diſpoſition of the party, but by the juſtice and conſideration of law, and therefore of all others they are moſt favour'd: and alſo they are principally three.

1. The King and lords who loſt the benefit of attainders, fines for alienations, eſcheats, aids, herriots, reliefs, &c.

2. The defendants in *præcipes* either real or perſonal, for debt and damages, who loſt the benefit of their recoveries and executions.

3. Tenants in dower, and by the courteſy, who loſt their eſtates and tithes.

1. Firſt for the King: no law doth endow the King or Sovereign with more prerogatives or privileges: for his perſon is privileged from ſuits and actions, his poſſeſſions from interruption and diſturbance, his right from limitation of time, his patents and gifts from all deceits and falſe ſuggeſtions. Next the King is the lord, whoſe duties and rights the law doth much favour, becauſe the law ſuppoſeth the land did originally come from him; for until the ſtatute of *Quia emptores terrarum*, the lord was not forced to deſtruct or diſmember his ſigniory or ſervice. So until 15 H. VII. the law was taken, that the lord, upon his title of wardſhip, ſhould put out a conuzee of a ſtatute, or a termor; ſo again we ſee, that the ſtatute of mortmain was made to preſerve the lord's eſcheats and wards: the tenant in dower is ſo much favoured, as that it is the common by-word in the law, that the law favoureth three things.

1. Life. 2. Liberty. 3. Dower.

So in caſe of voucher, the feme ſhall not be delayed, but ſhall recover againſt the heir incontinent; ſo likewiſe of tenant by courteſy it is called tenancy by the law of England, and therefore ſpecially favoured, as a proper conceit and invention of our law; ſo as again the law doth favour ſuch as have ancient rights, and therefore it telleth us it is commonly ſaid that a right cannot die: and that ground of law, that a freehold cannot be in ſuſpenſe, ſheweth it well, inſomuch that the law will rather give the land to the firſt comer, which we call an occupant, than want a tenant to a demandant's action.

And again the other ancient ground of law of *remitter*, ſheweth that where the tenant faileth without folly in the defendant, the law executeth the ancient right. To conclude therefore this point, when this practice of feoffments to uſe did prejudice and damnify all thoſe perſons that the ancient common law favour'd; and did abſolutely croſs the wiſdom of the law: to have conveyances conſiderate and not odious, and to have trial thereupon clear and not inveigled, it is no marvel that the ſtatute concludeth, that their ſubtle imaginations and abuſes tended to the utter ſubverſion of the ancient common laws of this realm.

The third part of the preamble giveth a touch of the remedy which the ſtatute intendeth to miniſter, conſiſting in two parts.

Firſt, the extirpation of feoffments.

Secondly, the taking away of the hurt, damage, and deceit of the uſes; out of which have been gathered two extremities of opinions.

The firſt opinion is, that the intention of the ſtatute was to diſcontinue and baniſh all conveyances in uſe; grounding themſelves upon the words, that the ſtatute doth not ſpeak of the extinguiſhment or extirpation of the uſe, viz. by an unity of poſſeſſion, but of an extinguiſhment or extirpation of the feoffment, &c. which is the conveyance itſelf.

Secondly,

Secondly, out of the words (abuſe and errors, heretofore uſed and accuſtomed) as if uſes had not been at the common law, but had been only an erroneous device or practice. To both which I anſwer.

To the former, that the extirpation which the ſtatute meant was plain, to be of the feoffee's eſtate, and not to form of conveyances.

To the latter I ſay, that for the word (abuſe) that may be an abuſe of the law, which is not againſt law, as the taking long leaſes at this day of land *in capite* to defraud wardſhips, is an abuſe of the law, which is not againſt law, but wandring or going aſtray, or digreſſing from the ancient practice of the law; and by the word (errors) the ſtatute meant by it, not a miſtaking of the law, into a by-courſe; as when we ſay *(erravimus cum patribus juris)* it is not meant of ignorance only, but of perverſity. But to prove that the ſtatute meant not to ſuppreſs the form of conveyances, there be three reaſons which are not anſwerable.

The firſt is, that the ſtatute in the very branch thereof hath words *de futuro* (that are ſeiſed, or hereafter ſhall be ſeiſed:) and whereas it may be ſaid that theſe words were put in, in regard of uſes ſuſpended by diſſeiſins, and ſo no preſent ſeiſin to the uſe, until a regreſs of the feoffees; that intendment is very particular, for commonly ſuch caſes are brought in by proviſoes, or ſpecial branches, and not intermixed in the body of a ſtatute; and it had been eaſy for the ſtatute to have ſaid, "or hereafter ſhall be ſeiſed upon any feoffment, *etc.* "heretofore had or made."

The ſecond reaſon is upon the words of the ſtatute of inrolments, which ſaith, that no hereditaments ſhall paſs, *etc.* or any uſe thereof, *etc.* whereby it is manifeſt, that the ſtatute meant to leave the form of conveyance with the addition of a farther ceremony.

The third reaſon I make is out of the words of the proviſo, where it is ſaid, that no primer ſeiſin, livery, no fine, nor alienation, ſhall be taken for any eſtate executed by force of the ſtatute of 27, before the firſt of May 1536, but they ſhall be paid for uſes made and executed in poſſeſſion for the time after; where the word (made) directly goeth to conveyances in uſe made after the ſtatute, and can have no other underſtanding; for the words (executed in poſſeſſion) would have ſerved for the caſe of regreſs: and laſtly, which is more than all, if they have had any ſuch intent, the caſe being ſo general and ſo plain, they would have had words expreſs, that every limitation of uſe made after the ſtatute ſhould have been void; and this was the expoſition, as tradition goeth, that a reader of Grays-Inn, which read ſoon after the ſtatute, was in trouble for, and worthily, who, as I ſuppoſe, was Boy, whoſe reading I could never ſee; but I do now inſiſt upon it, becauſe now again ſome in an immoderate invective againſt uſes, do relapſe to the ſame opinion.

The ſecond opinion, which I called a contrary extremity, is, that the ſtatute meant only to remedy the miſchiefs in the preamble, recited as they grew by reaſon of divided uſes; and although the like miſchief may grow upon the contingent uſes, yet the ſtatute had no foreſight of them at that time, and ſo it was merely a new caſe not compriſed. Whereunto I anſwer, that it is the work of the ſtatute to execute the divided uſe; and therefore to make an uſe void by this ſtatute which was good before, though it doth participate of the miſchief recited in the ſtatute, were to make a law upon a preamble without a purview, which were groſly abſurd. But upon the queſtion what uſes are executed, and what not; and whether out of poſſeſſions of a diſſeiſor, or other poſſeſſions out of privity or not, there you ſhall guide your expoſition according to the preamble; as ſhall be handled in my next day's diſcourſe, and ſo much touching the preamble of this law.

For the body of the law, I would wiſh all readers that expound ſtatutes to do as ſcholars are willed to do: that is, firſt to ſeek out the principal verb; that is, to note and ſingle out the material words whereupon the ſtatute is framed; for there are in every ſtatute certain words, which are as veins where the life and blood of the ſtatute cometh, and where all doubts do ariſe, and the reſt are *literae mortuae*, fulfilling words.

The body of the ſtatute conſiſteth upon two parts.

Firſt, a ſuppoſition or caſe put, as Anderſon 36 *Reginae* calleth it.

Secondly, a purview or ordinance thereupon.

The caſes of the ſtatute are three, and every one hath his purview. The general caſe. The caſe of co-feoffees to the uſe of ſome of them. And the general caſe of feoffees to the uſe or pernors of rents or profits.

The general caſe is built upon eight material words. Four on the part of the feoffees. Three on the part of *ceſtuy que uſe*. And one common to them both.

The firſt material word on the part of the feoffees is the word (perſon.) This excludes all alliances; for there can be no truſt repoſed but in a perſon certain: it excludes again all corporations; for they are equalled to a uſe certain: for note on the part of the feoffor-over the ſtatute inſiſts upon the word (perſon,) and on the part of *ceſtuy que uſe*, that added body politick.

The ſecond word material, is the word (ſeiſed:) this excludes chattels. The reaſon is, that the ſtatute meant to remit the common law, and not but that the chattels might ever paſs by teſtament or by parol; therefore the uſe did not pervert them. It excludes rights, for it is againſt the rules of the common law to grant, or transfer rights; and therefore the ſtatute would execute them. Thirdly, it excludes contingent uſes, becauſe the ſeiſin cannot be but to a fee-ſimple of a uſe; and when that is limited, the ſeiſin of the feoffee is ſpent; for Littleton tells us, that there are but two ſeiſins, one *in dominio ut de feodo*, the other *ut de feodo et jure*; and the feoffee by the common law could execute but the fee-ſimple to uſes preſent, and not poſt uſes; and therefore the ſtatute meant not to execute them.

The third material word is (hereafter:) that bringeth in again conveyances made after the ſtatute; it brings in again conveyances made before, and diſturb'd by diſſeiſin, and recontinued after; for it is not ſaid, infeoffed to uſe hereafter ſeis'd.

The fourth word is (hereditament) which is to be underſtood of thoſe things whereof an inheritance is in *eſſe:* for if I grant a rent charge *de novo* for life to a uſe, this is good enough; yet there is no inheritance in being of this rent: this word likewiſe excludes annuities and uſes themſelves; ſo that a uſe cannot be to a uſe.

The firſt word on the part of *ceſtuy que uſe*, is the word (uſe, confidence, or truſt) whereby it is plain that the ſtatute meant to remedy the matter, and not words; and in all the clauſes it ſtill carrieth the words.

The ſecond word is the word (perſon) again, which excludeth all alliances; it excludeth alſo all contingent uſes which are not to bodies lively and natural, as the building of a church, the making of a bridge; but here (as noted before) it is ever coupled with body politick.

The third word is the word (other;) for the ſtatute meant not to croſs the common law. Now at this time uſes were grown to ſuch a familiarity, as men could not think of poſſeſſion, but in courſe of uſe; and ſo every man was ſeiſed to his own uſe, as well as to the uſe of others; therefore becauſe ſtatutes would not ſtir nor turmoil poſſeſſions ſettled at the common law, it putteth in preciſely this word (other;) meaning the divided uſe, and not the conjoined uſe; and this cauſeth the clauſe of joint feoffees to follow in a branch by itſelf; for elſe that caſe had been doubtful upon this word (other.)

The words that are common to both, are words expreſſing the conveyance whereby the uſe ariſeth, of which words, thoſe that breed any queſtion are (agreement, will, or otherwiſe) whereby ſome have inferred that uſes might be raiſed by agreement parol, ſo there were a conſideration of money or other matter valuable; for it is expreſſed in the words before (bargain, ſale, and contract) but of blood, or kindred; the error of which collection appeareth in the word immediately following (viz. will) whereby they might as well include, that a man ſeiſed of land might raiſe an uſe by will, eſpecially to any of his ſons or kindred, where there is a real conſideration; and by that reaſon, mean, betwixt this ſtatute and the ſtatute of 32 of wills, lands were deviſeable, eſpecially to any man's kindred, which was clearly otherwiſe; and therefore thoſe words were put in, not in regard of uſes raiſed by thoſe conveyances, or without, or likewiſe by will, might be transferred; and there was a perſon ſeized to a uſe, by force of that agreement or will, *viz.* to the uſe of the aſſignee; and for the word (otherwiſe) it ſhould by the generality of the word include a diſſeiſin, to a uſe. But the whole ſcope of the ſtatute croſſeth that which was to execute ſuch uſes, as were confidences and truſt, which could not be in caſe of diſſeiſin; for if there were a commandment precedent, then the land was veſted in *ceſtuy que uſe* upon the entry;

entry; and if the diſſeiſin were of the diſſeiſor's own head, then no truſt. And thus much for the caſe of ſuppoſition of this ſtatute; here follow the ordinance and purview thereupon.

The purview hath two parts, the firſt *operatio ſtatuti*, the effect that the ſtatute worketh: and there is *modus operandi*, a fiction, or explanation how the ſtatute doth work that effect. The effect is, that *ceſtuy que uſe* ſhall be in poſſeſſion of like eſtate as he hath in the uſe; the fiction *quomodo* is, that the ſtatute will have the poſſeſſion of *ceſtuy que uſe*, as a new body compounded of matter and form; and that the feoffees ſhall give matter and ſubſtance, and the uſe ſhall give form and quality. The material words in the firſt part of the purview are four.

The firſt words are (remainder and reverter,) the ſtatute having ſpoken before of uſes in fee-ſimple, in tail, for life, or years, addeth (or otherwiſe in remainder or reverter:) whereby it is manifeſt, that the firſt words are to be underſtood of uſes in poſſeſſion. For there are two ſubſtantial and eſſential differences of eſtates, the one limiting the times (for all eſtates are but times of their continuances;) this maketh the difference of fee-ſimple, fee-tail, for life or years; and the other maketh difference of poſſeſſion and remainder: all other differences of eſtate are but accidents, as ſhall be ſaid hereafter: theſe two the ſtatute meant to take hold of, and at the words, remainder and reverter, it ſtops: it add not words, (right, title or poſſibility) nor it hath not general words (or otherwiſe:) it is moſt plain, that the ſtatute meant to execute no inferior uſes to remainder or reverter; that is to ſay, no poſſibility or contingencies, but eſtates, only ſuch as the feoffees might have executed by conveyance made. Note alſo, the very letter of the ſtatute doth take notice of a difference between an uſe in remainder and an uſe in reverter; which though it cannot be properly ſo called, becauſe it doth not depend upon particular eſtates, as remainders do, neither did then before the ſtatute draw any tenures as reverſions do; yet the ſtatute intends that there is a difference when the particular uſe, and the uſe limited upon the particular uſe, are both new uſes; in which caſe it is a uſe in remainder; and where the particular uſe is a new uſe, and the remnant of the uſe is the old uſe, in which caſe it is a uſe in reverter.

The next material word is (from henceforth) which doth exclude all conceit of relation that *ceſtuy que uſe* ſhall not come in: as from the time of the firſt feoffments to uſe, as Brudnell's conceit was in 14 Hen. VIII. That is, the feoffor had granted a rent charge, and *ceſtuy que uſe* had made a feoffment in fee, by the ſtatute of 1 Richard III. the feoffor ſhould have held it diſcharged, becauſe the act of *ceſtuy que uſe* ſhall put the feoffor in, as if *ceſtuy que uſe* had been ſeiſed in from the time of the firſt uſe limited; and therefore the ſtatute doth take away all ſuch ambiguities, and expreſſeth that *ceſtuy que uſe* ſhall be in poſſeſſion from henceforth; that is, from the time of the parliament for uſes then in being, and from the time of the execution for uſes limited after the parliament.

The third material words are (lawful ſeiſin, ſtate, and poſſeſſion) not a poſſeſſion in law only, but a ſeiſin in fact; not a title to enter into the land, but an actual eſtate.

The fourth words are (of and in ſuch eſtates as they had in the uſe;) that is to ſay, like eſtates, fee-ſimple, fee-tail, for life, for years at will, in poſſeſſion, and reverſion, which are the ſubſtantial differences of eſtates, as was ſaid before; but both theſe latter clauſes are more fully perfected and expounded by the branch of the fiction of the ſtatute which follows.

This branch of fiction hath three material words or clauſes: the firſt material clauſe is, that the eſtate, right, title, and poſſeſſion that was in ſuch perſon, *etc.* ſhall be in *ceſtuy que uſe*; for that the matter and ſubſtance of the eſtate of *ceſtuy que uſe* is the eſtate of the feoffee, and more he cannot have; ſo as if the uſe were limited to *ceſtuy que uſe* and his heirs, and the eſtate out of which it was limited was but an eſtate for life, *ceſtuy que uſe* can have no inheritance: ſo if when the ſtatute came the heir of the feoffee had not entred after the death of his anceſtor, but had only a poſſeſſion in law, *ceſtuy que uſe* in that caſe ſhould not bring an aſſize before entry, becauſe the heir of the feoffee could not; ſo that the matter whereupon the uſe muſt work is the feoffee's eſtate. But note here: whereas before when the ſtatute ſpeaks of the uſes, it ſpake only of

uſes in poſſeſſion, remainder and reverter, but not in title or right; now when the ſtatute ſpeaks what ſhall be taken from the feoffee, it ſpeaks of title and right: ſo that the ſtatute takes more from the feoffee than it executes preſently, in caſe where there are uſes in contingence which are but titles.

The ſecond word is (clearly) which ſeems properly and directly to meet with the conceit of *ſcintilla juris*, as well as the words in the preamble of extirpating and extinguiſhing ſuch feoffments, ſo is their eſtate as clearly extinct.

The third material clauſe is (after ſuch quality, manners, form, and condition as they had in the uſe;) ſo as now as the feoffee's eſtate gives matter, ſo the uſe gives form: and as in the firſt clauſe the uſe was endowed with the poſſeſſion in points of eſtate, ſo here it is endowed with the poſſeſſion in all accidents and circumſtances of eſtate. Wherein firſt note, that it is groſs and abſurd to expound the form of the uſe any whit to deſtroy the ſubſtance of the eſtate; as to make a doubt, becauſe the uſe gave no dower or tenancy by the courteſy, that therefore the poſſeſſion when it is transferred would do ſo likewiſe: no, but the ſtatute meant ſuch quality, manner, form and condition, as it is not repugnant to the corporal preſence and poſſeſſion of the eſtate.

Next for the word (condition) I do not hold it to be put in for uſes upon condition, though it be alſo compriſed within the general words; but becauſe I would have things ſtood upon learnedly, and according to the true ſenſe, I hold it but for an explaining, or word of the effect; as it is in the ſtatute of 26 of treaſons, where it is ſaid, that the offenders ſhall be attainted of the overt fact by men of their condition (in this place) that is to ſay, of their degree or ſort: and ſo the word condition in this place is no more, but in like quality, manner, form and degree, or ſort; ſo as all theſe words amount but to *modo et forma*. Hence therefore all circumſtances of eſtate are comprehended as ſole ſeiſin, or joint ſeiſin, by intierties, or by moieties, a circumſtance of eſtate to have age as coming in by deſcent, or not age as purchaſer; or circumſtance of eſtate deſcendable to the heir of the part of the father, or of the part of the mother; a circumſtance of eſtate conditional or abſolute, remitted or not remitted, with a condition of inter-marriage or without: all theſe are accidents and circumſtances of eſtate, in all which the poſſeſſion ſhall enſue the nature and quality of the uſe: and thus much of the firſt caſe, which is the general caſe.

The ſecond caſe of the joint feoffees needs no expoſition; for it purſueth the penning of the general caſe: only this I will note, that although it had been omitted, yet the law upon the firſt caſe would have been taken as the caſe provided; ſo that it is rather an explanation than an addition: for turn that caſe the other way, that one were infeoffed to the uſe of himſelf, I hold the law to be, that in the former caſe they ſhall be ſeiſed jointly; and ſo in the latter caſe *ceſtuy que uſe* ſhall be ſeiſed ſolely: for the word (other) it ſhall be qualified by the conſtruction of caſes, as ſhall appear when I come to my diviſion. But becauſe this caſe of co-feoffees to the uſe of one of them was a general caſe in the realm, therefore they foreſaw it, expreſs'd it preciſely, and paſs'd over the caſe *e converſo*, which was but an eſpecial caſe: and they were loth to bring in this caſe, by inſerting the word (only) into the firſt caſe, to have penned it to the uſe only of other perſons; for they had experience what doubt the word (only) bred upon the ſtatute of 1 R. III. after this third caſe: and before the third caſe of rents comes in the ſecond ſaving; and the reaſon of it is worth the noting, why the ſavings are interlaced before the third caſe; the reaſon of it is, becauſe the third caſe needeth no ſaving, and the firſt two caſes did need ſavings; and that is the reaſon of that again.

It is a general ground, that where an act of parliament is donor, if it be penned with an *(ac ſi)* it is not a ſaving, for it is a ſpecial gift, and not a general gift, which includes all rights; and therefore in 11 Henry VII. where upon the alienation of women, the ſtatute intitles the heir of him in remainder to enter, you find never a ſtranger, becauſe the ſtatute gives entry not *ſimpliciter*, but within an *(ac ſi;)* as if no alienation had been made, or if the feme had been naturally dead. Strangers that had right might have entred; and therefore no ſaving needs. So in the ſtatute of 32 of leaſes, the ſtatute enacts, that the leaſes ſhall be good and effectual in law, as if the leſſor had been ſeiſed of a good and perfect eſtate in fee-ſimple; and therefore you find no ſaving in the ſtatute;

and ſo likewiſe of diverſe other ſtatutes, where the ſtatute doth make a gift or title good ſpecially againſt certain perſons, there needs no ſaving, except it be to exempt ſome of thoſe perſons; as in the ſtatute of 1 R. III. Now to apply this to the caſe of rents, which is penned with an *(ac ſi)* (viz.) as if a ſufficient grant or lawful conveyance had been made, or executed by ſuch as were ſeiſed; why if ſuch a grant of a rent had been made, one that had an ancient right might have entred and have avoided the charge; and therefore no ſaving needeth: but the ſecond firſt caſes are not penned with an *(ac ſi)* but abſolute, that *ceſtuy que uſe* ſhall be adjudged in eſtate and poſſeſſion, which is a judgment of parliament ſtronger than any fine, to bind all rights; nay, it hath farther words (viz.) in lawful eſtate and poſſeſſion, which maketh it ſtronger than any in the firſt clauſe. For if the words only had ſtood upon the ſecond clauſe (viz.) that the eſtate of the feoffee ſhould be in *ceſtuy que uſe*, then perhaps the gift ſhould have been ſpecial, and ſo the ſaving ſuperfluous: and this note is material in regard of the great queſtion, whether the feoffees may make any regreſs; which opinion (I mean, that no regreſs is left unto them) is principally to be argued out of the ſaving; as ſhall be now declared: for the ſavings are two in number; the firſt ſaveth all ſtrangers rights, with an exception of the feoffees; the ſecond is a ſaving out of the exception of the firſt ſaving (viz.) of the feoffees in caſe where they claim to their own proper uſe: it had been eaſy in the firſt ſaving out of the ſtatute (other than ſuch perſons as are ſeiſed, or hereafter ſhould be ſeiſed to any uſe) to have added theſe words (executed by this ſtatute;) or in the ſecond ſaving to have added unto the words (claiming to their proper uſe) theſe words (or to the uſe of any other, and executed by this ſtatute:) but the regreſs of the feoffee is ſhut out between the two ſavings; for it is the right of a perſon claiming to an uſe, and not unto his own proper uſe; but it is to be added, that the firſt ſaving is not to be underſtood as the letter implieth, that feoffees to uſe ſhall be barred of their regreſs, in caſe that it be of another feoffment than that whereupon the ſtatute hath wrought, but upon the ſame feoffment; as if the feoffee before the ſtatute had been diſſeiſed, and the diſſeiſed had made a feoffment in fee to I. D. his uſe, and then the ſtatute came: this executeth the uſe of the ſecond feoffment; but the firſt feoffees may make a regreſs, and they yet claim to an uſe, but not by that feoffment upon which the ſtatute hath wrought.

Now followeth the third caſe of the ſtatute, touching execution of rents; wherein the material words are four:

Firſt, whereas diverſe perſons are ſeiſed, which hath bred a doubt that it ſhould only go to rents in uſe at the time of the ſtatute; but it is explained in the clauſe following (viz.) as if a grant had been made to them by ſuch as are or ſhall be ſeiſed.

The ſecond word is (profit;) for in the putting of the caſe, the ſtatute ſpeaketh of a rent; but after in the purview is added theſe words (or profit.)

The third word is *(ac ſi) ſcil.* that they ſhall have the rent as if a ſufficient grant or lawful conveyance had been made and executed unto them.

The fourth words are the words of liberty and remedies attending upon ſuch rent, *ſcil.* that he ſhall diſtrain, etc. and have ſuch ſuits, entries, and remedies, relying again with an *(ac ſi)* as if the grant had been made with ſuch collateral penalties and advantages.

Now for the proviſoes; the makers of this law did ſo abound with policy and diſcerning, as they did not only foreſee ſuch miſchiefs as were incident to this new law immediately, but likewiſe ſuch as were conſequent in a remote degree; and therefore beſides the expreſs proviſoes, they did add three new proviſoes which are in themſelves ſubſtractive laws: for foreſeeing that by the execution of uſes, wills formerly made ſhould be overthrown; they made an ordinance for wills. Foreſeeing likewiſe, that by execution of uſes, women ſhould be doubly advanced; they made an ordinance for dowers and jointures. Foreſeeing again, that the execution of uſes would make *franktenement* paſs by contracts paroll, they made an ordinance for inrollments of bargains and ſales. The two former they inſerted into this law, and the third they diſtinguiſhed into a law

apart, but without any preamble as may appear, being but a proviſo to this ſtatute. Beſides all theſe proviſional laws; and beſides four proviſoes, whereof three attend upon the law of jointure, and one of perſons born in Wales, which are not material to the purpoſe in hand; there are ſix proviſoes which are natural and true members and limbs of the ſtatute, whereof four concern the part of *ceſtuy que uſe*, and two concern the part of the feoffees. The four which concern the part of *ceſtuy que uſe*, tend all to ſave him from prejudice by the execution of the eſtate.

The firſt ſaveth him from the extinguiſhment of any ſtatute or recognizance, as if a man had an extent of a hundred acres, and an uſe of the inheritance of one. Now the ſtatute executing the poſſeſſion to that one, would have extinguiſhed his extent being intire in all the reſt: or as if the conuzee of a ſtatute having ten acres liable to the ſtatute, had made a feoffment in fee to a ſtranger of two, and after had made a feoffment in fee to the uſe of the conuzee and his heirs. And upon this proviſo there ariſe three queſtions:

Firſt, whether this proviſo were not ſuperfluous, in regard that *ceſtuy que uſe* was comprehended in the general ſaving, though the feoffees be excluded?

Secondly, whether this proviſo doth ſave ſtatutes or executions, with an apportionment, or entire?

Thirdly, becauſe it is penned indefinitely in point of time, whether it ſhall go to uſes limited after the ſtatute, as well as to thoſe that were in being at the time of the ſtatute; which doubt is rather inforced by this reaſon, becauſe there was for † uſes at the time of the ſtatute; for that the execution of the ſtatute might be waived: but both poſſeſſion and uſe, ſince the ſtatute, may be waived.

The ſecond proviſo ſaveth *ceſtuy que uſe* from the charge of *primer ſeiſin*, *liveries*, *ouſter le maines*, and ſuch other duties to the King, with an expreſs limitation of time, that he ſhall be diſcharged for the time paſt, and charged for the time to come to the King, *viz.* May 1536. to be *communis terminus*.

The third proviſo doth the like for fines, reliefs, and herriots, diſcharging them for the time paſt, and ſpeaking nothing of the time to come.

The fourth proviſo giveth to *ceſtuy que uſe* all collateral benefits of vouchers, aid-priers, actions of waſte, treſpaſs, conditions broken, and which the feoffees might have had; and this is expreſly limited for eſtates executed before 1 May 1536. And this proviſo giveth occaſion to intend that none of theſe benefits would have been carried to *ceſtuy que uſe*, by the general words in the body of the law, *ſcil.* that the feoffees eſtate, right, title, and poſſeſſion, *etc.*

For the two proviſoes on the part of the tertenant, they both concern the ſaving of ſtrangers from prejudice, *etc.*

The firſt ſaves actions depending againſt the feoffees, that they ſhall not abate.

The ſecond ſaves wardſhips, liveries, and *ouſter le maines*, whereof title was veſted in regard of the heir of the feoffee, and this in caſe of the King only.

What perſons may be ſeiſed to an uſe, and what not.
What perſons may be ceſtuy que uſe, *and what not.*
What perſons may declare an uſe, and what not.

THOUGH I have opened the ſtatute in order of words, yet I will make my diviſion in order of matter, *viz.*

1. The raiſing of uſes.
2. The interruption of uſes.
3. The executing of uſes.

Again, the raiſing of uſes doth eaſily divide itſelf into three parts: The perſons that are actors to the conveyance to uſe. The uſe itſelf. The form of the conveyance.

Then it is firſt to be ſeen what perſons may be ſeiſed to an uſe, and what not; and what perſons may be *ceſtuy que uſe*, and what not.

The King cannot be ſeiſed to an uſe; no, not where he taketh in his natural body, and to ſome purpoſe as a common perſon; and therefore if land be given to the King and I. D. *pur terme de tour vies*, this uſe is void for a moiety.

† The text here is manifeſtly corrupted, nor does any probable conjecture occur for its amendment.

Like

Like law is, if the King be ſeiſed of land in the right of his duchy of Lancaſter, and covenanteth by his letters patent under the duchy ſeal to ſtand ſeiſed to the uſe of his ſon, nothing paſſeth.

Like law, if King R. III. who was feoffee to diverſe uſes before he took upon him the crown, had, after he was King, by his letters patent granted the land over, the uſes had not been renewed.

The Queen (ſpeaking not of an imperial Queen but by marriage) cannot be ſeiſed to an uſe, though ſhe be a body enabled to grant and purchaſe, without the King: yet in regard of the government and intereſt the King hath in her poſſeſſion, ſhe cannot be ſeiſed to an uſe.

A corporation cannot be ſeiſed to an uſe, becauſe their capacity is to a uſe certain; again, becauſe they cannot execute an eſtate without doing wrong to their corporation or founder; but chiefly becauſe of the letter of this ſtatute which (in any clauſe when it ſpeaketh of the feoffee) reſteth only upon the word (perſon,) but when it ſpeaketh of *ceſtuy que uſe*, it addeth perſon or body politick.

If a biſhop bargain and ſell lands whereof he is ſeiſed in the right of his ſee, this is good during his life; otherwiſe it is where a biſhop is infeoffed to him and his ſucceſſors, to the uſe of I. D. and his heirs, that is not good, no not for the biſhop's life, but the uſe is merely void.

Contrary law of tenant in tail; for if I give land in tail by deed ſince the ſtatute to A, to the uſe of B and his heirs; B hath a fee-ſimple determinable upon the death of A without iſſue. And like law, though doubtful before the ſtatute, was; for the chief reaſon which bred the doubt before the ſtatute, was becauſe tenant in tail could not execute an eſtate without wrong; but that ſince the ſtatute is quite taken away, becauſe the ſtatute ſaveth no right of intail, as the ſtatute of 1 R. III. did; and that reaſon likewiſe might have been anſwered before the ſtatute, in regard of the common recovery.

A feme covert and an infant, though under years of diſcretion, may be ſeiſed to an uſe; for as well as land might deſcend unto them from a feoffee to uſe, ſo may they originally be infeoffed to an uſe; yet if it be before the ſtatute, and they had (upon a *ſubpoena* brought) executed their eſtate during the coverture or infancy, they might have defeated the ſame; and when they ſhould have been ſeiſed again to the uſe, and not to their own uſe; but ſince the ſtatute no right is ſaved unto them.

If a feme covert or an infant be enfeoffed to an uſe precedent ſince the ſtatute, the infant or baron come too late to diſcharge or root up the feoffment; but if an infant be infeoffed to the uſe of himſelf and his heirs, and I. D. pay ſuch a ſum of money to the uſe of I. G. and his heirs, the infant may diſagree and overthrow the contingent uſe.

Contrary law, if an infant be infeoffed to the uſe of himſelf for life, the remainder to the uſe of I. S. and his heirs, he may diſagree to the feoffment as to his own eſtate, but not to diveſt the remainder, but it ſhall remain to the benefit of him in remainder.

And yet if an attainted perſon be infeoffed to an uſe, the King's title, after office found, ſhall prevent the uſe, and relate above it; but until office the *ceſtuy que uſe* is ſeiſed of the land.

Like law of an alien; for if land be given to an alien to an uſe, the uſe is not void *ab initio:* yet neither alien or attainted perſon can maintain an action to defend the land.

The King's villain if he be infeoffed to an uſe, the King's title ſhall relate above the uſe; otherwiſe in caſe of a common perſon.

But if the lord be infeoffed to the uſe of his villain, the uſe neither riſeth, but the lord is in by the common law, and not by the ſtatute diſcharged of the uſe.

But if the huſband be infeoffed to the uſe of his wife for years, if he die the wife ſhall have the term, and it ſhall not inure by way of diſcharge, although the huſband may diſpoſe of the wife's term.

So if the lord of whom the land is held be infeoffed to the uſe of a perſon attainted, the lord ſhall not hold by way of diſcharge of the uſe, becauſe of the King's title, *annum, diem et vaſtum.*

A perſon uncertain is not within the ſtatute, nor any eſtate *in nubibus* or ſuſ-

penſe executed: as if I give land to I. S. the remainder to the right heirs of I. D. to the uſe of I. N. and his heirs, I. N. is not ſeiſed of the fee-ſimple of an eſtate *pur vie* of I. S. till I. D. be dead, and then in fee-ſimple.

Like law, if before the ſtatute I give land to I. S. *pur autre vie* to an uſe, and I. S. dieth, living *ceſtuy que uſe*, whereby the freehold is in ſuſpenſe, the ſtatute cometh, and no occupant entreth; the uſe is not executed out of the freehold in ſuſpenſe for the occupant, the diſſeiſor, the lord by eſcheat. The feoffee upon conſideration, not having notice, and all other perſons which ſhall be ſeiſed to uſe, not in regard of their perſons but of their title; I refer them to my diviſion touching diſturbance and interruption of uſes.

It followeth now to ſee what perſon may be a *ceſtuy que uſe*. The King may be *ceſtuy que uſe*; but it behoveth both the declaration of the uſe, and the conveyance itſelf, to be matter of record, becauſe the King's title is compounded of both; I ſay, not appearing of record, but by conveyance of record. And therefore if I covenant with I. S. to levy a fine to him to the King's uſe, which I do accordingly; and this deed of covenant be not inroll'd, and the deed be found by office, the uſe veſteth not. *E converſo*, if inroll'd. If I covenant with I. S. to infeof him to the King's uſe, and the deed be inroll'd, and the feoffment alſo be found by office, the uſe veſteth.

But if I levy a fine, or ſuffer a recovery to the King's uſe, and declare the uſe by deed of covenant inroll'd, though the King be not party, yet it is good enough.

A corporation may take an uſe, and yet it is not material whether the feoffment or the declaration be by deed; but I may infeoff I. S. to the uſe of a corporation, and this uſe may be averred.

An uſe to a perſon uncertain is not void in the firſt limitation, but executeth not till the perſon be *in eſſe*; ſo that this is poſitive, that an uſe ſhall never be in abeyance as a remainder may be, but ever in a perſon certain upon the words of the ſtatute, and the eſtate of the feoffees ſhall be in him or them which have the uſe. The reaſon is, becauſe no confidence can be repoſed in a perſon unknown and uncertain; and therefore if I make a feoffment to the uſe of I. S. for life, and then to the uſe of the right heirs of I. D. the remainder is not in abeyance, but the reverſion is in the feoffor *(quouſque.)* So that upon the matter all perſons uncertain in uſe, are like conditions or limitations precedent.

Like law, if I enfeoff one to the uſe of I. S. for years, the remainder to the right heirs of I. D. this is not executed in abeyance, and therefore not void.

Like law, if I make a feoffment to the uſe of my wife that ſhall be, or to ſuch perſons as I ſhall maintain, though I limit no particular eſtate at all; yet the uſe is good, and ſhall in the interim return to the feoffor.

Contrary law, if I once limit the whole fee-ſimple of the uſe out of land, and part thereof to a perſon uncertain, it ſhall never return to the feoffor by way of fraction of the uſe: but look how it ſhould have gone unto the feoffor; if I begin with a contingent uſe, ſo it ſhall go to the remainder; if I entail a contingent uſe, both eſtates are alike ſubject to the contingent uſe when it falleth; as when I make a feoffment in fee to the uſe of my wife for life, the remainder to my firſt begotten ſon; I having no ſon at that time, the remainder to my brother and his heirs: if my wife die before I have any ſon, the uſe ſhall not be in me, but in my brother. And yet if I marry again, and have a ſon, it ſhall diveſt from my brother, and be in my ſon, which is the ſkipping they talk ſo much of.

So if I limit an uſe jointly to two perſons, not *in eſſe*, and the one cometh to be *in eſſe*, he ſhall take the entire uſe; and yet if the other afterward come *in eſſe*, he ſhall take jointly with the former; as if I make a feoffment to the uſe of my wife that ſhall be, and my firſt begotten ſon for their lives, and I marry; my wife taketh the whole uſe, and if I afterwards have a ſon, he taketh jointly with my wife.

But yet where words of abeyance work to an eſtate executed in courſe of poſſeſſion, it ſhall do the like in uſes; as if I enfeoff A to the uſe of B for life, the remainder to C for life, the remainder to the right heirs of B, this is a good remainder executed.

So if I enfeoff A to the uſe of his right heirs, A is in the fee-ſimple, not by the ſtatute, but by the common law.

Now are we to examine a ſpecial point of the diſability of ſuch perſons as do take by the ſtatute: and that upon the words of the ſtatute, where diverſe perſons are ſeiſed to the uſe of other perſons; ſo that by the letter of the ſtatute, no uſe is contained: but where the feoffor is one, and *ceſtuy que uſe* is another.

Therefore it is to be ſeen in what caſes the ſame perſons ſhall be both ſeiſed to the uſe and *ceſtuy que uſe*, and yet in by the ſtatute; and in what caſes they ſhall be diverſe perſons, and yet in by the common law; wherein I obſerve unto you three things: Firſt, that the letter is full in the point. Secondly, that it is ſtrongly urged by the clauſe of joint eſtates following. Thirdly, that the whole ſcope of the ſtatute was to remit the common law, and never to intermeddle where the common law executed an eſtate; therefore the ſtatute ought to be expounded, that where the party ſeiſed to the uſe, and the *ceſtuy que uſe* is one perſon, he never taketh by the ſtatute, except there be a direct impoſſibility or impertinency for the uſe, to take effect by the common law.

And if I give land to I. S. to the uſe of himſelf and his heirs; and if I. D. pay a ſum of money, then to the uſe of I. D. and his heirs, I. S. is in of an eſtate for life, or for years, by way of abridgement of eſtate in courſe of poſſeſſion, and I. D. in of the fee-ſimple by the ſtatute.

So if I bargain and ſell my land after ſeven years, the inheritance of the uſe only paſſeth; and there remains an eſtate for years by a kind of ſubſtraction of the inheritance or occupier of my eſtate, but merely at the common law.

But if I enfeoff I. S. to the uſe of himſelf in tail, and then to the uſe of I. D. in fee, or covenant to ſtand ſeiſed to the uſe of myſelf in tail, and to the uſe of my wife in fee; in both theſe caſes the eſtate tail is executed by this ſtatute; becauſe an eſtate tail cannot be re-occupied out of a fee-ſimple, being a new eſtate, and not like a particular eſtate for life or years, which are but portions of the abſolute fee; and therefore if I bargain and ſell my land to I. S. after my death without iſſue, it doth not leave an eſtate tail in me, nor veſteth any preſent fee in the bargainee, but is an uſe expectant.

So if I enfeoff I. S. to the uſe of I. D. for life, and then to the uſe of himſelf and his heirs, he is in of the fee-ſimple merely in courſe of poſſeſſion, and as of a reverſion, and not of a remainder.

Contrary law, if I enfeoff I. S. to the uſe of I. D. for life, then to the uſe of himſelf for life, the remainder to the uſe of I. N. in fee: Now the law will not admit fraction of eſtates; but I. S. is in with the reſt by the ſtatute.

So if I enfeoff I. S. to the uſe of himſelf and a ſtranger, they ſhall be both in by the ſtatute, becauſe they could not take jointly, taking by ſeveral titles.

Like law, if I enfeoff a biſhop and his heirs to the uſe of himſelf, and his ſucceſſors, he is in by the ſtatute in the right of his ſee.

And as I cannot raiſe a preſent uſe to one out of his own ſeiſin; ſo if I limit a contingent or future uſe to one being at the time of limitation not ſeiſed, but after become ſeiſed at the time of the execution of the contingent uſe, there is the ſame reaſon and the ſame law, and upon the ſame difference which I have put before.

As if I covenant with my ſon, that after his marriage I will ſtand ſeiſed of land to the uſe of himſelf and his heirs; and before marriage I enfeoff him to the uſe of himſelf and his heirs, and then he marrieth; he is in by the common law, and not by the ſtatute; like law of a bargain and ſale.

But if I had lett to him for life only, then he ſhould have been in for life only by the common law, and of the fee-ſimple by ſtatute. Now let me adviſe you of this, that it is not a matter of ſubtilty or conceit to take the law right, when a man cometh in by the law in courſe of poſſeſſion, and where he cometh in by the ſtatute in courſe of poſſeſſion; but it is material for the deciding of many cauſes and queſtions, as for warranties, actions, conditions, waivers, and diverſe other proviſoes.

For example; a man's farmer committed waſte: after he in reverſion covenanteth to ſtand ſeiſed to the uſe of his wife for life, and after to the uſe of himſelf and his heirs; his wife dies; if he be in his fee untouched, he ſhall puniſh the waſte; if he be in by the ſtatute, he ſhall not puniſh it.

So if I be infeoffed with warranty, and I covenant with my ſon to ſtand ſeiſed

to the uſe of myſelf for life, and after to him and his heirs; if I be in by the ſtatute, it is clear my warranty is gone; but if I be in by the common law, it is doubtful.

So if I have an eigne right, and be infeoffed to the uſe of I. S. for life, then to the uſe of myſelf for life, then to the uſe of I. D. in fee, I. S. dieth. If I be in by the common law, I cannot waive my eſtate, having agreed to the feoffment: but if I am in by the ſtatute, yet I am not remitted, becauſe I come in by my own act: but I may waive my uſe, and bring an action preſently; for my right is ſaved unto me by one of the ſavings in the ſtatute. Now on the other ſide it is to be ſeen, where there is a ſeiſin to the uſe of another perſon; and yet it is out of the ſtatute which is in ſpecial caſes upon the ground, whereſoever *ceſtuy que uſe* had remedy for the poſſeſſion by courſe of common law, there the ſtatute never worketh; and therefore if a diſſeiſin were committed to an uſe, it is in him by the common law upon agreement; ſo if one enter as occupant to the uſe of another, it is in him till diſagreement.

So if a feme enfeoff a man *(cauſa matrimonii praelocuti)* ſhe hath remedy for the land again by courſe of the law; and therefore in thoſe ſpecial caſes the ſtatute worketh not; and yet the words of the ſtatute are general, where any perſon ſtands ſeiſed by force of any fine, recovery, feoffment, bargain and ſale, agreement or otherwiſe) but yet the feme is to be reſtrained for the reaſon aforeſaid.

It remaineth to ſhew what perſons may limit and declare an uſe: wherein we muſt diſtinguiſh; for there are two kinds of declarations of uſes, the one of a preſent uſe upon the firſt conveyance, the other upon a power of revocation or new declaration; the latter of which I refer to the diviſion of revocation: now for the former.

The King upon his letters patent may declare an uſe, though the patent itſelf implieth an uſe, if none be declared.

If the King gives lands by his letters to I. S. and his heirs, to the uſe of I. S. for life, the King hath the inheritance of the uſe by implication of the patent, and no office needeth; for implication out of matter of record, amounteth ever to matter of record.

If the Queen give land to I. S. and his heirs to the uſe of all the church-wardens of the church of Dale, the patentee is ſeiſed to his own uſe, upon that confidence or intent; but if a common perſon had given land in that manner, the uſe had been void by the ſtat. of 23 H. VIII. and the uſe had returned to the feoffor and his heirs. A corporation may take an uſe without deed, as hath been ſaid before; but can limit no uſe without deed.

An infant may limit an uſe upon a feoffment, fine, or recovery, and he cannot countermand or avoid the uſe, except he avoid the conveyance; contrary, if an infant covenant in conſideration of blood or marriage to ſtand ſeiſed to an uſe, the uſe is merely void.

If an infant bargain and ſell his land for money, for commons or teaching, it is good with averment; if for money, otherwiſe: if it be proved it is avoidable; if for money recited and not paid, it is void; and yet in the caſe of a man of full age the recital ſufficeth.

If baron and feme be ſeiſed in the right of the feme, or by joint purchaſe during the coverture, and they join in a fine, the baron cannot declare the uſe for longer time than the coverture, and the feme cannot declare alone; but the uſe goeth according to the limitation of law, unto the feme and her heirs: but they may both join in declaration of the uſe in fee; and if they ſever, then it is good for ſo much of the inheritance as they concurred in; for the law avoucheth all one as if they joined: as if the baron declare an uſe to I. S. and his heirs, and the feme another to I. D. for life, and then to I. S. and his heirs, the uſe is good to I. S. in fee.

And if upon examination the feme will declare the uſe to the judge, and her huſband agree not to it, it is void, and the baron's uſe is only good; the reſt of the uſe goeth according to the limitation of law.

THE

ARGUMENTS

IN

LAW

OF

Sir FRANCIS BACON, Knight,

the KING's Solicitor-General,

IN

Certain Great and Difficult Cases.

To my loving Friends and Fellows,

The READERS, ANCIENTS, UTTER-BARRISTERS, and STUDENTS, OF GRAYS-INN.

I Do not hold the law of England in ſo mean an account, but that which other laws are held worthy of, ſhould be due likewiſe to our laws, as no leſs worthy for our ſtate. Therefore when I found that not only in the ancient times, but now at this day, in France, Italy, and other nations, the ſpeeches, and, as they term them, pleadings, which have been made in judicial caſes (where the caſes were mighty and famous) have been ſet down by thoſe that made them, and publiſhed; ſo that not only a Cicero, a Demoſthenes, or an Æſchines, hath ſet forth his Orations, as well in the judicial as deliberative; but a Marrian and a Pavier have done the like by their pleadings; I know no reaſon why the ſame ſhould not be brought in uſe by the profeſſors of our law for their arguments in principal caſes. And this I think the more neceſſary, becauſe the compendious form of reporting reſolutions, with the ſubſtance of the reaſons, lately uſed by Sir Edward Coke, lord Chief Juſtice of the King's bench, doth not delineate or trace out to the young practiſers of law, a method and form of argument for them to imitate. It is true I could have wiſhed ſome abler perſon had begun; but it is a kind of order ſometimes to begin with the meaneſt. Nevertheleſs thus much I may ſay with modeſty, that theſe arguments which I have ſet forth (moſt of them) are upon ſubjects not vulgar; and therewithal, in regard of the commixture, which the courſe of my life hath made of law with other ſtudies, they may have the more variety, and perhaps the more depth of reaſon: for the reaſons of municipal laws, ſevered from the grounds of nature, manners, and policy, are like wall-flowers, which though they grow high upon the creſt of ſtates, yet they have no deep root: beſides, in all publick ſervices I ever valued my reputation more than my pains; and therefore in weighty cauſes I always uſed extraordinary diligence; in all which reſpects I perſuade my ſelf the reading of them will be not unprofitable. This work I knew not to whom to dedicate, rather than to the Society of GRAYS-INN, the place whence my father was called to the higheſt place of juſtice, and where myſelf have lived and had my procedure ſo far, as by his Majeſty's rare if not ſingular grace, to be of both his councils: and therefore few men, ſo bound to their ſocieties by obligation, both anceſtral and perſonal, as I am to yours; which I would gladly acknowledge not only in having your name joined with mine own in a book, but in any other good office and effect which the active part of my life and place may enable me unto toward the Society, or any of you in particular. And ſo I bid you right heartily farewel.

Your aſſured loving friend and fellow,

FRANCIS BACON.

THE

THE

CASE

OF

IMPEACHMENT of WASTE.

ARGUED

Before all the JUDGES in the Exchequer Chamber.

THE caſe needs neither repeating nor opening. The point is in ſubſtance but one, familiar to be put, but difficult to be reſolved; that is, Whether, upon a leaſe without impeachment of waſte, the property of the timber-trees, after ſeverance, be not in him that is owner of the inheritance.

The caſe is of great weight, and the queſtion of great difficulty: weighty it muſt needs be, for that it doth concern, or may concern, all the lands in England; and difficult it muſt be, becauſe this queſtion ſails *in confluentiis aquarum*, in the meeting or ſtrife of two great tides. For there is a ſtrong current of practice and opinion on the one ſide, and there is a more ſtrong current (as I conceive) of authorities, both ancient and late, on the other ſide. And therefore, according to the reverend cuſtom of the realm, it is brought now to this aſſembly; and it is high time the queſtion receive an end, the law a rule, and mens conveyances a direction.

This doubt ariſeth and reſteth upon two things to be conſidered; firſt, to conſider of the intereſt and property of a timber-tree, to whom it belongeth: and ſecondly, to conſider of the conſtruction and operation of theſe words or clauſe, *abſque impetitione vaſti*: for within theſe two branches will aptly fall whatſoever can be pertinently ſpoken in this queſtion, without obſcuring the queſtion by any other curious diviſion.

FOR the firſt of theſe conſiderations, which is the intereſt or property of a timber-tree, I will maintain and prove to your lordſhips three things.

Firſt, That a timber-tree, while it groweth, is merely parcel of the inheritance, as well as the ſoil itſelf.

And, ſecondly, I will prove, that when either nature, or accident, or the hand of man hath made it tranſitory, and cut it off from the earth, it cannot change the owner, but the property of it goes where the inheritance was before. And thus much by the rules of the common law.

And, thirdly, I will ſhew that the ſtatute of Glouceſter doth rather corroborate and confirm the property in the leſſor, than alter it, or transfer it to the leſſee.

And for the ſecond conſideration, which is the force of that clauſe, *abſque impetitione vaſti*, I will alſo uphold and make good three other aſſertions.

Firſt, That if that clauſe ſhould be taken in the ſenſe which the other ſide would force upon it, that it were a clauſe repugnant to the eſtate and void.

Secondly, That the ſenſe which we conceive and give, is natural in reſpect of the words; and for the matter agreeable to reaſon and the rules of law.

And laſtly, That if the interpretation ſeem ambiguous and doubtful, yet the very miſchief itſelf, and conſideration of the common-wealth, ought rather to incline your lordſhips judgment to our conſtruction.

MY firſt aſſertion therefore is, that a timber-tree is a ſolid parcel of the inheritance; which may ſeem a point admitted, and not worth the labouring. But there is ſuch a chain in this caſe, as that which ſeemeth moſt plain, if it is ſharply

looked into, doth invincibly draw on that which is moſt doubtful. For if the tree be parcel of the inheritance unſevered, inherent in the reverſion, ſeverance will not alien it, nor the clauſe will not diveſt it.

To open therefore the nature of an inheritance: ſenſe teacheth there be of the ſoil and earth, parts that are raiſed and eminent, as timber-trees, rocks, houſes. There be parts that are ſunk and depreſſed, as mines, which are called by ſome *arbores ſubterraneae*, becauſe that as trees have great branches and ſmaller boughs and twigs; ſo have they in their region greater and ſmaller veins: ſo if we had in England beds of porcelane, ſuch as they have in China, which porcelane is a kind of a plaſter buried in the earth, and by length of time congealed and glazed into that fine ſubſtance; this were as an artificial mine, and no doubt part of the inheritance. Then are there the ordinary parts, which make the maſs of the earth, as ſtone, gravel, loam, clay, and the like.

Now as I make all theſe much in one degree, ſo there is none of them, not timber-trees, not quarries, not minerals or foſſils, but hath a double nature; inheritable and real, while it is contained with the maſs of the earth; and tranſitory and perſonal, when it is once ſevered. For even gold and precious ſtone, which is more durable out of earth than any tree is upon the earth; yet the law doth not hold of that dignity as to be matter of inheritance if it be once ſevered. And this is not becauſe it becometh moveable, for there be moveable inheritances, as villains in groſs, and dignities which are judged hereditaments; but becauſe by their ſeverance they loſe their nature of perpetuity, which is of the eſſence of an inheritance.

Nevil's caſe proving there are inheritances which are not local.

And herein I do not a little admire the wiſdom of the laws of England, and the conſent which they have with the wiſdom of philoſophy and nature itſelf: for it is a maxim in philoſophy, that *in regione elementari nihil eſt aeternum, niſi per propagationem ſpeciei, aut per ſucceſſionem partium.*

The conſent of the law with philoſophy in diſtinguiſhing between perpetual and tranſitory.

And it is moſt evident, that the elements themſelves, and their products have a perpetuity not *in individuo*, but by ſupply and ſucceſſion of parts. For example, the veſtal fire; that was nouriſhed by the virgins at Rome, was not the ſame fire ſtill, but was in perpetual waſte, and in perpetual renovation. So it is of the ſea and waters, it is not the ſame water individually, for that exhales by the ſun, and is fed again by ſhowers. And ſo of the earth itſelf, and mines, quarries, and whatſoever it containeth, they are corruptible individually, and maintained only by ſucceſſion of parts, and that laſteth no longer than they continue fixed to the main and mother-globe of the earth, and is deſtroyed by their ſeparation.

According to this I find the wiſdom of the law, by imitation of the courſe of nature, to judge of inheritances and things tranſitory; for it alloweth no portions of the earth, no ſtone, no gold, no mineral, no tree, no mould to be longer inheritance than they adhere to the maſs, and ſo are capable of ſupply in their parts: for by their continuance of body ſtands their continuance of time.

Neither is this matter of diſcourſe, except the deep and profound reaſons of law, which ought chiefly to be ſearched, ſhall be accounted diſcourſe, as the ſlighter ſort of wits *(Scioli)* may eſteem them.

And therefore now that we have opened the nature of inheritable and tranſitory, let us ſee, upon a diviſion of eſtates, and before ſeverance, what kind of intereſts the law allotteth to the owner of inheritance, and what to the particular tenant; for they be competitors in this caſe.

The conſent of the law with the civil law, in the diſtinguiſhing between inheritance and particular eſtates, which hath relation to their diviſion of *dominium* and *uſus-fructus*.

Firſt, In general the law doth aſſign to the leſſor thoſe parts of the ſoil conjoined, which have obtained the reputation to be durable, and of continuance, and ſuch as being deſtroyed, are not but by long time renewed; and to the terminors it aſſigneth ſuch intereſts as are tender and feeble againſt the force of time, but have an annual or ſeaſonable return or revenue. And herein it conſents again with the wiſdom of the civil law; for our inheritance and particular eſtate is in effect their *dominium* and *uſus-fructus*; for ſo it was conceived upon the ancient ſtatute of depopulations 4 Hen. VII. which was penned, "that the owner of the "land ſhould re-edify the houſes of huſbandry," that the word *owner* (which anſwereth to *dominus*) was he that had the immediate inheritance; and ſo ran the later ſtatutes. Let us ſee therefore what judgment the law maketh of a timber-

Owner in the ſtat. of 4 H. 7.

tree;

tree; and whether the law doth not place it within the lot of him that hath the inheritance as parcel thereof.

First, it appeareth by the regiſter out of the words of the writ of waſte, that the waſte is laid to be *ad exhaeredationem*, which preſuppoſeth *haereditatem:* for there cannot be a diſinheriſon by the cutting down of the tree, except there was an inheritance in the tree, *quia privatio praeſupponit actum.*

The writ of waſte ſuppoſeth the felling timber to be *ad exhaeredationem.*

Again it appeareth out of the words of the ſtatute of Glouceſter well obſerved, that the tree and the ſoil are one entire thing, for the words are *quod recuperet rem vaſtatam*; and yet the books ſpeak, and the very judgment in waſte is, *quod recuperet locum vaſtatum*, which ſhews, that *res* and *locus* are in expoſition of law taken indifferently: for the leſſor ſhall not recover only the ſtem of the tree, but he ſhall recover the very ſoil, whereunto the ſtem continues. And therefore it is notably ruled in 22 H. VI. f. 13. that if the terminor do firſt cut down the tree, and then deſtroy the ſtem, the leſſor ſhall declare upon two ſeveral waſtes, and recover treble damages for them ſeverally. But, ſays the book, he muſt bring but one writ, for he can recover the place waſted but once.

The ſtatute of Glouceſter, *quod recuperet rem vaſtatam*, not *locum vaſtatum.*

22 H. 6. f. 13.

And farther proof may be fitly alledged out of Mullin's caſe in the commentaries, where it is ſaid, that for timber-trees tithes ſhall not be paid. And the reaſon of the book is well to be obſerved; "for that tithes are to be paid for the re-"venue of the inheritance, and not for the inheritance itſelf."

Mullin's caſe.

Nay, my lords, it is notable to conſider what a reputation the law gives to the trees, even after they are ſevered by grant, as may be plainly inferred out of Herlackenden's caſe, L. Coke, p. 4. f. 62. I mean the principal caſe; where it is reſolved, that if the trees being excepted out of a leaſe granted to the leſſee, or if the grantee of trees accept a leaſe of the land, the property of the trees drown not, as a term ſhould drown in a freehold, but ſubſiſt as a chattel divided; which ſhews plainly, though they be made tranſitory, yet they ſtill to ſome purpoſe favour of the inheritance: for if you go a little farther, and put the caſe of a ſtate tail, which is a ſtate of inheritance, then I think clearly they are re-annexed. But on the other ſide, if a man buy corn ſtanding upon the ground, and take a leaſe of the ſame ground, where the corn ſtands, I ſay plainly it is re-affixed, for *paria copulantur cum paribus.*

Co. p. 4. f. 62.

And it is no leſs worthy the note, what an operation the inheritance leaveth behind it in matter of waſte, even when it is gone, as appeareth in the caſe of tenant after poſſibility, who ſhall not be puniſhed; for though the new reaſon be, becauſe his eſtate was not within the ſtatute of Glouceſter; yet I will not go from my old maſter Littleton's reaſon, which ſpeaketh out of the depth of the common law, he ſhall not be puniſhed "for the inheritance ſake which was once in him."

But this will receive a great deal of illuſtration, by conſidering the terminor's eſtate, and the nature thereof, which was well defined by Mr. Heath (who ſpake excellent well to the caſe) that is it ſuch as he ought to yeild up the inheritance in as good plight, as he received it; and therefore the word *firmarius* (which is the word of the ſtatute of Marlebridge) cometh, as I conceive, *a firmando*; becauſe he makes the profit of the inheritance, which otherwiſe ſhould be upon account, and uncertain, firm and certain; and accordingly *feodi firma*, fee-farm, is a perpetuity certain. Therefore the nature and limit of a particular tenant is to make the inheritance certain, and not to make it worſe.

The derivation and force of the word *firmarius.*

1. Therefore he cannot break the ſoil otherwiſe than with his ploughſhare to turn up perhaps a ſtone, that lieth aloft; his intereſt is *in ſuperficie*, not *in profundo*, he hath but *tunicam terrae*, little more than the veſture.

If we had fir-timber here, as they have in Muſcovy, he could not pierce the tree to make the pitch come forth, no more than he may break the earth.

So we ſee the evidence, which is *propugnaculum haereditatis*, the fortreſs and defence of the land, belongeth not to the leſſee, but to the owner of the inheritance.

The evidence *propugnaculum haereditatis.*

So the leſſee's eſtate is not accounted of that dignity, that it can do homage, becauſe it is a badge of continuance in the blood of lord and tenant. Neither for my own opinion can a particular tenant of a manor have aid *pur file marier, ou pur faire fitz chevalier*; becauſe it is given by law upon an intendment of continuance of blood and privity between lord and tenant.

Homage importeth continuance in the blood.

Particular tenants of ſeigniories ſhall not have aid.

And

And for the tree, which is now in queſtion, do but conſider in what a revolution the law moves, and as it were in an orb: for when the tree is young and tender, *germen terrae*, a ſprout of the earth, the law giveth it to the leſſee, as having a nature not permanent, and yet eaſily reſtored: when it comes to be a timber-tree, and hath a nature ſolid and durable, the law carrieth it to the leſſor. But after again if it become a ſear and a dotard, and its ſolid parts grow putrefied, and as the poet ſaith, *non jam mater alit tellus viresque miniſtrat*, then the law returns it back to the leſſee. This is true juſtice, this is *ſuum cuique tribuere*; the law guiding all things with line of meaſure and proportion.

The phraſe, that the leſſee hath a ſpecial property in the tree very improper; for he hath but the profits of the tree.

And therefore that intereſt of the leſſee in the tree, which the books call a ſpecial property, is ſcarce worth that name. He ſhall have the ſhade, ſo ſhall he have the ſhade of a rock; but he ſhall not have a cryſtal or Briſtol diamond growing upon the rock. He ſhall have the pannage; why? that is the fruit of the inheritance of a tree, as herb or graſs is of the ſoil. He ſhall have ſeaſonable loppings; why? ſo he ſhall have ſeaſonable diggings of an open mine. So all theſe things are rather profits of the tree, than any ſpecial property in the tree. But about words we will not differ.

So as I conclude this part, that the reaſon and wiſdom of law doth match things, as they conſort, aſcribing to permanent ſtates permanent intereſt, and to tranſitory ſtates tranſitory intereſt; and you cannot alter this order of law by fancies of clauſes and liberties, as I will tell you in the proper place. And therefore the tree ſtanding belongs clearly to the owner of the inheritance.

Now come I to my ſecond aſſertion, that by the ſeverance the ownerſhip or property cannot be altered; but that he that had the trees as part of the inheritance before, muſt have it as a chattel tranſitory after. This is pregnant and followeth of itſelf, for it is the ſame tree ſtill, and, as the Scripture ſaith, *uti arbor cadet, ita jacet.*

The owner of the whole muſt needs own the parts; he that owneth the cloth owneth the thread, and he that owneth an engine when it is entire owneth the parts when it is broken; breaking cannot alter property.

Herlackenden's caſe.

And therefore the book in Herlackenden's caſe doth not ſtick to give it ſomewhat plain terms; and to ſay that it were an abſurd thing, that the leſſee which hath a particular intereſt in the land, ſhould have an abſolute property in that which is part of the inheritance: you would have the ſhadow draw the body, and the twigs draw the trunk. Theſe are truly called abſurdities. And therefore in a concluſion ſo plain, it ſhall be ſufficient to vouch the authorities without enforcing the reaſons.

And although the diviſion be good, that was made by Mr. Heath, that there be four manners of ſeverances, that is, when the leſſee fells the tree, or when the leſſor fells it, or when a ſtranger fells it, or when the act of God, a tempeſt, fells it; yet this diviſion tendeth rather to explanation than to proof, and I need it not, becauſe I do maintain that in all theſe caſes the property is in the leſſor.

Three arguments of property, damages, ſeiſure, and power to grant.

And therefore I will uſe a diſtribution which rather preſſeth the proof. The queſtion is of property. There be three arguments of property; damages, ſeiſure, and grant: and according to theſe I will examine the property of the trees by the authority of books.

And firſt for damages.

For damages, look into the books of the law, and you ſhall not find the leſſee ſhall ever recover damages, not as they are a badge of property; for the damages, which he recovereth, are of two natures, either for the ſpecial property (as they call it) or as he is chargeable over. And for this, to avoid length, I will ſelect three books, one where the leſſee ſhall recover treble damages; another where he ſhall recover but for his ſpecial property; and the third where he ſhall recover for the body of the tree, which is a ſpecial caſe, and ſtandeth merely upon a ſpecial reaſon.

44 E. 3. f. 27.

The firſt is the book of 44 E. III. f. 27. where it is agreed, that if tenant for life be, and a diſſeiſor commit waſte, the leſſee ſhall recover in treſpaſs as he ſhall anſwer in waſte: but that this is a kind of recovery of damages, though *per accidens*, may appear plainly.

For if the leſſor die, whereby his action is gone, then the diſſeiſor is likewiſe diſcharged, otherwiſe than for the ſpecial property.

The ſecond book is 9 E. IV. f. 35. where it is admitted, that if the leſſor himſelf cut down the tree, the leſſee ſhall recover but for his ſpecial profit of ſhade, pannage, loppings, becauſe he is not charged over. 9 E. 4. f. 35.

The third is 44 E. III. f. 44. where it is ſaid, that if the leſſee fell trees to repair the barn, which is not ruinous in his own default, and the leſſor come and take them away, he ſhall have treſpaſs, and in that caſe he ſhall recover for the very body of the tree, for he hath an abſolute property in them for that intent. 44 E. 3. f. 44.

And that it is only for that intent appeareth notably by the book 38 *Aſſ.* f. 1. If the leſſee after he hath cut down the tree employ it not to reparations, but employ other trees of better value, yet it is waſte; which ſheweth plainly the property is reſpective to the employment. 38 Aſſ. f. 1.

Nay, 5 E. IV. f. 100. goeth farther and ſheweth, that the ſpecial property which the leſſee had was of the living tree, and determines, as Herlackenden's caſe ſaith, by ſeverance; for then *magis dignum trahit ad ſe minus dignum:* for it ſaith, that the leſſee cannot pay the workmens wages with thoſe parts of the tree which are not timber. And ſo I leave the firſt demonſtration of property, which is by damages; except you will add the caſe of 27 H. VIII. f. 13. where it is ſaid, that if tenant for life and he in the reverſion join in a leaſe for years, and leſſee for years fell timber-trees, they ſhall join in an action of waſte; but he in the reverſion ſhall recover the whole damages: and great reaſon, for the ſpecial property was in the leſſee for years, the general in him in the reverſion, ſo the tenant for life meane had neither the one nor the other. 5 E. 4. f. 100. 27 H. 8. f. 13.

Now for the ſeiſure, you may not look for plentiful authority in that: for the leſſor, which had the more beneficial remedy by action for treble damages, had little reaſon to reſort to the weaker remedy by ſeiſure, and leaſes without impeachment were then rare, as I will tell you anon. And therefore the queſtion of the ſeiſure came chiefly in experience upon the caſe of the windfalls, which could not be puniſhed by action of waſte.

Firſt, therefore, the caſe of 40 E. III. pl. 22. is expreſs, where at the King's ſuit, in the behalf of the heir of Darcy who was in ward, the King's leſſee was queſtioned in waſte, and juſtified the taking of the trees, becauſe they were overthrown by winds, and taken away by a ſtranger. But Knevet ſaith, although one be guardian, yet the trees, when by their fall they are ſevered from the freehold, he hath no property of the chattels, but they appertain to the heir, and the heir ſhall have treſpaſs of them againſt a ſtranger, and not the guardian, no more than the bailiff of a manor. So that that book rules the intereſt of the tree to be in the heir, and goes to a point farther, that he ſhall have treſpaſs for them; but of ſeiſure there had been no queſtion. 40 E. 3. pl. 22.

So again in 2 H. VII. the words of Brian are, that for the timber-trees the leſſor may take them; for they are his; and ſeemeth to take ſome difference between them and the gravel. 2 H. 7. f. 14.

The like reaſon is of the timber of an houſe, as appears 34 E. III. f. 5. abridged by Brook, tit. *waſte*, pl. 34. when it is ſaid, it was doubted who ſhould have the timber of a houſe which fell by tempeſt; and ſaith the book, it ſeems it doth appertain to the leſſor; and good reaſon, for it is no waſte, and the leſſee is not bound to re-edify it: and therefore it is reaſon the leſſor have it; but Herlackenden's caſe goes farther, where it is ſaid that the leſſee may help himſelf with the timber, if he will re-edify it; but clearly he hath no intereſt but towards a ſpecial employment. 34 E. 3. f. 5.

Now you have had a caſe of the timber-tree, and of the timber of the houſe, now take a caſe of the mine, where that of the trees is likewiſe put, and that is 9 E. IV. f. 35. where it is ſaid by Needham, that if a leaſe be made of land wherein there is tin, or iron, or lead, or coals, or quarry, and the leſſor enter and take the tin or other materials, the leſſee ſhall puniſh him for coming upon his land, but not for taking of the ſubſtances. And ſo of great trees: but Danby goes farther, and ſaith, the law that gives him the thing, doth likewiſe give 9 E. 4. f. 35.

him means to come by it; but they both agree that the intereſt is in the leſſor. And thus much for the ſeiſure.

For the grant: it is not ſo certain a badge of property as the other two; for a man may have a property, and yet not grantable, becauſe it is turned into a right, or otherwiſe ſuſpended. And therefore it is true, that by the book in 21 H. VI. that if the leſſor grant the trees, the grantee ſhall not take them, no not after the leaſe expired; becauſe his property is but *de futuro*, expectant; but 'tis as plain on the other ſide that the leſſee cannot grant them, as was reſolved in two notable caſes, namely the caſe of Marwood and Sanders 41 El. *in communi banco*; where it was ruled, that the tenant of the inheritance may make a feoffment with exception of timber trees; but that if leſſee for life or years ſet over his eſtate with an exception of the trees, the exception is utterly void; and the like reſolution was in the caſe between Foſter and Mills plaintiff, and Spencer and Boord defendant, 28 Eliz. rot. 820.

Marwood and Sanders. C.

Foſter and Spencer's caſe

Now come we to the authorities, which have an appearance to be againſt us, which are not many, and they be eaſily anſwered, not by diſtinguiſhing ſubtilly, but by marking the books adviſedly.

1. There be two books that ſeem to croſs the authorities touching the intereſt of the windfalls, 7 H. VI. and 44 E. III. f. 44. where, upon waſte brought and aſſigned in the ſucciſion of trees, the juſtification is, that they were overthrown by wind, and ſo the leſſee took them for fuel, and allowed for a good plea; but theſe books are reconciled two ways: firſt, look into both the juſtifications, and you ſhall find that the plea did not rely only in that they were windfalls, but couples it with this that they were firſt ſear, and then overthrown by wind; and that makes an end of it, for ſear trees belong to the leſſee, ſtanding or felled, and you have a ſpecial replication in the book of 44 E. III. that the wind did but rend them, and buckle them, and that they bore fruit two years after. And 2dly, you have ill luck with your windfalls, for they be ſtill apple-trees which are but waſtes *per accidens*, as willows, or thorns are in the ſight of a houſe; but when they are once felled they are clearly matter of fuel.

7 H. 6. 44 E. 3. f. 44.

Another kind of authorities, that make ſhew againſt us, are thoſe that ſay that the leſſee ſhall puniſh the leſſor in treſpaſs for taking the trees, which are 5 H. IV. f. 29. and 1 Mar. *Dier*. f. 90. Mervin's caſe; and you might add if you will 9 E. IV. the caſe vouched before: unto which the anſwer is, that treſpaſs muſt be underſtood for the ſpecial property, and not for the body of the tree; for thoſe two books ſpeak not a word, what he ſhall recover, nor that it ſhall be to the value. And therefore 9 E. IV. is a good expoſitor, for that diſtinguiſheth where the other two books ſpeak indefinitely; yea, but 5 H. IV. goes farther, and ſaith, that the writ ſhall purport *arbores ſuas*, which is true in reſpect of the ſpecial property; neither are writs to be varied according to ſpecial caſes, but are framed to the general caſe, as upon lands recovered in value in tail, the writ ſhall ſuppoſe *donum*, a gift.

5 H. 4. f. 29. 1 Ma. f. 90.

And the third kind of authority is ſome books (as 13 H. VII. f. 9.) that ſay, that treſpaſs lies not by the leſſor againſt the leſſee for cutting down trees, but only waſte; but that it is to be underſtood of treſpaſs *vi et armis*, and would have come fitly in queſtion, if there had been no ſeiſure in this caſe.

13 H. 7. f. 9.

Upon all which I conclude, that the whole current of authorities proveth the properties of the trees upon ſeverance to be in the leſſor by the rules of the common law; and that although the common law would not ſo far protect the folly of the leſſor, as to give him remedy by action, where the ſtate was created by his own act; yet the law never took from him his property; ſo that as to the property, before the ſtatute and ſince, the law was ever one.

Now come I to the third aſſertion, that the ſtatute of Glouceſter hath not transferred the property of the leſſee upon an intendment of recompenſe to the leſſor; which needs no long ſpeech: it is grounded upon a probable reaſon, and upon one ſpecial book.

The reaſon is, that damages are a recompenſe for property; and therefore that the ſtatute of Glouceſter giving damages ſhould exclude property. The authority ſeems to be 12 E. IV. f. 8. where Cateſbey affirming that the leſſee at will

12 E. 4. f. 8.

will ſhall have the great trees, as well as leſſee for years or life; Fairfax and Jennings correct it with a difference, that the leſſor may take them in the caſe of tenant at will, becauſe he hath no remedy by the ſtatute, but not in caſe of the termors.

This conceit may be reaſonable thus far, that the leſſee ſhall not both ſeiſe and bring waſte; but if he ſeiſe, he ſhall not have his action; if he recover by action, he ſhall not ſeiſe: for a man ſhall not have both the thing and recompenſe; it is a bar to the higheſt inheritance (the kingdom of heaven) *receperunt mercedem ſuam.* But at the firſt, it is at his election, whether remedy he will uſe, like as in the caſe of treſpaſs; where if a man once recover in damages, it hath concluded and turned the property. Nay, I invert the argument upon the force of the ſtatute of Glouceſter thus: that if there had been no property at common law; yet the ſtatute of Glouceſter, by reſtraining the waſte, and giving an action, doth imply a property: whereto a better caſe cannot be put than the caſe upon the ſtatute *de donis conditionalibus*, where there are no words to give any reverſion or remainder; and yet the ſtatute giving a *formedon*, where it lay not before, being but an action, implies an actual reverſion and remainder.

Thus have I paſſed over the firſt main part, which I have inſiſted upon the longer, becauſe I ſhall have uſe of it for the clearing of the ſecond.

A ſtatute giving an action impli-eth an in-tereſt.

NOW to come to the force of the clauſe, *abſque impetitione vaſti*. This clauſe muſt of neceſſity work in one of theſe degrees, either by way of grant of property, or by way of power and liberty knit to the ſtate, or by way of diſcharge of action; whereof the firſt two I reject, the laſt I receive.

Therefore I think the other ſide will not affirm, that this clauſe amounts to a grant of trees; for then, according to the reſolution in Herlackenden's caſe, they ſhould go to the executors, and the leſſee might grant them over, and they might be taken after the ſtate determined. Now it is plain that this liberty is created with the eſtate, paſſeth with the eſtate, and determines with the eſtate.

No grant of property.

That appears by 5 Hen. V. where it is ſaid, that if leſſee for years without impeachment of waſte accept a confirmation for life, the privilege is gone. 5 H. 5.

And ſo are the books in 3 E. III. and 28 H. VIII. that if a leaſe be made without impeachment of waſte *pur autre vie*, the remainder to the leſſee for life, the privilege is gone, becauſe he is in of another eſtate; ſo then plainly it amounts to no grant of property, neither can it any ways touch the property, nor enlarge the ſpecial property of the leſſee: for will any man ſay, that if you put Marwood and Sanders's caſe of a leaſe without impeachment of waſte, that he may grant the land with the exception of the trees any more than an ordinary leſſee? Or ſhall the windfalls be more his in this caſe than in the other? for he was not impeachable of waſte for windfalls no more than where he hath the clauſe. Or will any man ſay, that if a ſtranger commit waſte, ſuch a leſſee may ſeiſe? Theſe things, I ſuppoſe, no man will affirm. Again, why ſhould not a liberty or privilege in law be as ſtrong as a privilege in fact? as in the caſe of tenant after poſſibility: Or where there is a leſſee for life the remainder for life? for in theſe caſes they are privileged from waſte, and yet that trenches not the property. 3 E. 3. 28 H. 8.

Now therefore to take the ſecond courſe, that it ſhould be as a real power annexed to the ſtate; neither can that be, for it is the law that moldeth eſtates, and not mens fancies. And therefore if men by clauſes, like voluntaries in muſick, run not upon the grounds of law, and do reſtrain an eſtate more than the law reſtrains it, or enable an eſtate more than the law enables it, or guide an eſtate otherwiſe than the law guides it, they be mere repugnancies and vanities. And therefore if I make a feoffment in fee, provided the feoffee ſhall not fell timber, the clauſe of condition is void. And ſo on the other ſide, if I make a leaſe with a power that he ſhall fell timber, it is void.

So if I make a leaſe with a power that he may make feoffment, or that he may make leaſes for forty years, or that if he make default I ſhall not be received, or that the leſſee may do homage; theſe are plainly void, as againſt law,

and

and repugnant to the ſtate. No, this cannot be done by way of uſe, except the words be apt, as is Mildmay's caſe: neither is this clauſe in the ſenſe that they take it, any better.

Therefore laying aſide theſe two conſtructions, whereof the one is not maintained to be, the other cannot be: let us come to the true ſenſe of this clauſe, which is by way of diſcharge of the action, and no more; wherein I will ſpeak firſt of the words, then of the reaſon, then of the authorities which prove our ſenſe, then of the practice, which is pretended to prove theirs; and laſtly, I will weigh the miſchief how it ſtands for our conſtruction or theirs.

It is an ignorant miſtaking of any man to take impeachment for *impedimentum*, and not for *impetitio*; for it is true that *impedimentum* doth extend to all hindrances, or diſturbances, or interruptions, as well in *pais* as judicial. But *impetitio* is merely a judicial claim, or interruption by ſuit in law, and upon the matter all one with *implacitatio*. Wherein firſt we may take light of the derivation of *impetitio*, which is a compound of the prepoſition *in*, and the verb *peto*, whereof the verb *peto* itſelf doth ſignify a demand, but yet properly ſuch a demand as is not *extra judicial:* for the words *petit judicium*, *pedit auditum brevis*, *etc.* are words of acts judicial; as for the demand in *pais*, it is rather *requiſitio* than *petitio*, as *licet ſaepius requiſitus*; ſo much for the verb *peto*. But the prepoſition *in* enforceth it more, which ſignifies *againſt*; as *Cicero in Verrem*, *in Catilinam*; and ſo in compoſition, to inveigh, is to ſpeak againſt: ſo it is ſuch a demand only where there is a party raiſed to demand againſt, that is an adverſary, which muſt be in a ſuit in law; and ſo it is uſed in records of law.

As Coke lib. 1. f. 17. Porter's caſe, it was pleaded in bar, that *dicta domina regina nunc ipſos Johannem et Henricum Porter petere ſeu occaſionare non debet*, that is, *implacitare*.

So likewiſe Coke l. 1. f. 27. caſe of Alton woods, *quod dicta domina regina nunc ipſum proinde aliqualiter impetere ſeu occaſionare non debet*.

So in the book of entries f. 1. *lit.* D. 15 H. VII. rot. 2. *inter placita regis, et ſuper hoc venit W. B. commonachus abbatis W. loci illius ordinarii, gerenſque vices ipſius abbatis, ad quoſcunque clericos de quolibet crimine coram domino rege impetitos ſive irritatos calumniand'*. So much *ex vi et uſu termini*.

For reaſon; firſt, it ought to be conſidered, that the puniſhment of waſte is ſtrict and ſevere, becauſe the penalty is great, treble damages, and the place waſted: and again, becauſe the leſſee muſt undertake for the acts of ſtrangers: whereupon I infer, that the reaſon which brought this clauſe in uſe, *ab initio*, was caution to ſave, and to free men from the extremity of the penalty, and not any intention to countermand the property.

Add to this that the law doth aſſign in moſt caſes double remedy, by matter of ſuit, and matter in *pais*; for diſſeiſins, actions and entries; for treſpaſſes, action and ſeiſure; for nuſances, action and abatement: and, as Littleton doth inſtruct us, one of theſe remedies may be releaſed without touching the other. If the diſſeiſee releaſe all actions, ſaith Littleton, yet my entry remains; but if I releaſe all demands or remedies, or the like words of a general nature, it doth releaſe the right itſelf. And therefore I may be of opinion, that if there be a clauſe of grant in my leaſe expreſſed, that if my leſſee or his aſſigns cut down and take away any timber-trees, that I and my heirs will not charge them by action, claim, ſeiſure, or other interruption, either this ſhall inure by way of covenant only, or if you take it to inure by way of abſolute diſcharge, it amounts to a grant of property in the trees, like as the caſe of 31. *Aſſiſ.* I grant, that if I pay not you 10 l. *per annum* at ſuch feaſts, you ſhall diſtrain for it in my manor of Dale, though this ſound executory in power, yet it amounts to a preſent grant of a rent. So as I conclude that the diſcharge of action the law knows, grant of the property the law knows, but this ſame mathematical power being a power amounting to a property, and yet no property, and knit to a ſtate that cannot bear it, the law knoweth not, *tertium penitus ignoramus*.

31 *Aſſiſ.* A clauſe that ſounds to a power, amounts to a property, if the ſtate bear it.

For the authorities, they are of three kinds, two by inference, and the third direct.

42 E. 3. f. 23, 24. The firſt I do collect upon the books of 42 Edw. III. f. 23, and 24. by the difference taken by Mowbray, and agreed by the court, that the law doth intend

the clauſe of diſimpeachment of waſte to be a diſcharge ſpecial, and not general or abſolute; for there the principal caſe was, that there was a clauſe in the leaſe, that the leſſor ſhould not demand any right, claim, or challenge in the lands during the life of the leſſee. It is reſolved by the book, that it is no bar in waſte; but that if the clauſe had been, that the leſſee ſhould not have been impeached for waſte, clearly a good bar; which demonſtrates plainly, that general words, be they never ſo loud and ſtrong, bear no more than the ſtate will bear, and to any other purpoſe are idle. But ſpecial words that inure by way of diſcharge of action, are good and allowed by law.

The ſame reaſon is of the books 4 Ed. II. Fitzh. tit. *waſte* 15. and 17 E. III. f. 7. Fitzh. tit. *waſte* 101. where there was a clauſe, *Quod liceat facere commodum ſuum meliori modo quo poterit.* Yet, ſaith Skipwith, doth this amount, that he ſhall for the making of his own profit diſinherit the leſſor? *Nego conſequentiam*; ſo that ſtill the law allows not of the general diſcharge, but of the ſpecial that goeth to the action. 4 E. 2. Fitzh. tit. waſte 15. 17 E. 3. f. 7. Fitzh tit. waſte, 101.

The ſecond authority by inference is out of 9 H. VI. f. 35. Fitzh. tit. *waſte* 39. and 32 H. VIII. Dyer f. 47. where the learning is taken, that notwithſtanding this clauſe be inſerted into a leaſe, yet a man may reſerve unto himſelf remedy by entry: but ſay I, if this clauſe ſhould have that ſenſe, which they on the other ſide would give it, namely, that it ſhould amount to an abſolute privilege and power of diſpoſing, then were the proviſo flat repugnant, all one as if it were *abſque impetitione vaſti, proviſo quod non faciet vaſtum*; which are contradictories: and note well that in the book of 9 H. VI. the proviſo is *quod non faciat vaſtum voluntarium in domibus*; which indeed doth but abridge in one kind, and therefore may ſtand without repugnancy: but in the latter book it is general, that is to ſay *abſque impetitione vaſti, et ſi contigerit ipſum facere vaſtum tunc licebit reintrare.* And there Shelley making the objection, that the condition was repugnant, it is ſalved thus, *ſed aliqui tenuerunt* that this word *impetitione vaſti* is to be underſtood that he ſhall not be impleaded by waſte, or puniſhed by action; and ſo indeed it ought: thoſe *aliqui recte tenuerunt.* 9 H. 6. f. 35. Fitzh. tit. waſte 39. 32 H. 8 Dyer. f. 47.

For the authorities direct, they are two, the one 27 H. VI. Fitzh. tit. *waſte* 8. where a leaſe was made without impeachment of waſte, and a ſtranger committed waſte, and the rule is, that the leſſee ſhall recover in treſpaſs only for the crop of the tree, and not for the body of the tree. It is true it comes by a *dicitur*, but it is now a *legitur*; and a *quaere* there is, and reaſon, or elſe this long ſpeech were time ill ſpent. 27 H. 6. Fitzh. tit. waſte, 8.

And the laſt authority is the caſe of Sir Moyle Finch and his mother, referred to my lord Wrey and Sir Roger Manwood, reſolved upon conference with other of the judges vouched by Wrey in Herlackenden's caſe, and reported to my lord Chief Juſtice, here preſent, as a reſolution of law, being our very caſe.

And for the caſes to the contrary, I know not one in all the law direct: they preſs the ſtatute of Marlebridge, which hath an exception in the prohibition, *firmarii non facient vaſtum*, etc. *niſi ſpecialem inde habuerint conceſſionem per ſcriptum conventionis, mentionem faciens, quod hoc facere poſſint.* This preſſeth not the queſtion; for no man doubteth, but it will excuſe in an action of waſte: and again, *niſi habeant ſpecialem conceſſionem* may be meant of an abſolute grant of the trees themſelves: and otherwiſe the clauſe *abſque impetitione vaſti* taketh away the force of the ſtatute, and looſeth what the ſtatute bindeth; but it toucheth not the property at common law. Statute *e* Marlebridge.

For Littleton's caſe in his title *Of conditions*, where it is ſaid, that if a feoffment in fee be made upon condition, that the feoffee ſhall infeoff the huſband and wife, and the heirs of their two bodies; and that the huſband die that now the feoffee ought to make a leaſe without impeachment of waſte to the wife, the remainder to the right heirs of the body of her huſband and her begotten; whereby it would be inferred, that ſuch a leſſee ſhould have equal privilege with tenant in tail: the anſwer appears in Littleton's own words, which is, that the feoffee ought to go as near the condition, and as near the intent of the condition as he may. But to come near is not to reach, neither doth Littleton undertake for that. Littleton.

Culpepper's case. 2 Eliz. Dyer f. 184.

As for Culpepper's caſe, it is obſcurely put, and concluded in diviſion of opinion; but yet ſo as it rather makes for us. The caſe is 2 Eliz. Dyer f. 184. and is in effect this: a man makes a leaſe for years, excepting timber-trees, and afterwards makes a leaſe without impeachment of waſte to John a Style, and then granteth the land and trees to John a Down, and binds himſelf to warrant and ſave harmleſs John a Down againſt John a Style; John a Style cutteth down the trees; the queſtion was, whether the bond were forfeited? and that queſtion reſorteth to the other queſtion; whether John a Style, by virtue of ſuch leaſe, could fell the trees? and held by Weſton and Brown that he could not: which proves plainly for us that he had no property by that clauſe in the tree; though it is true that in that caſe the exception of the trees turneth the caſe, and ſo in effect it proveth neither way.

Practice.

For the practice, if it were ſo ancient and common, as is conceived; yet ſince the authorities have not approved, but condemned it, it is no better than a popular error: it is but *pedum viſa eſt via*, not *recta viſa eſt via*. But I conceive it to be neither ancient nor common. It is true I find it firſt in 19 E. II. (I mean ſuch a clauſe) but it is one thing to ſay that the clauſe is ancient; and it is another thing to ſay, that this expoſition, which they would now introduce, is ancient. And therefore you muſt note that a practice doth then expound the law, when the act which is practiſed, were merely tortious or void, if the law ſhould not approve it: but that is not the caſe here, for we agree the clauſe to be lawful; nay, we ſay that it is in no ſort inutile but there is uſe of it, to avoid this ſevere penalty of treble damages. But to ſpeak plainly, I will tell you how this clauſe came in from 13 of E. I. till about 12 of E. IV. The ſtate tail though it had the qualities of an inheritance, yet it was without power to alien; but as ſoon as that was ſet at liberty by common recoveries, then there muſt be found ſome other device, that a man might be an abſolute owner of the land for the time, and yet not enabled to alien, and for that purpoſe was this clauſe found out: for you ſhall not find in one amongſt an hundred, that farmers had it in their leaſes; but thoſe that were once owners of the inheritance, and had put it over to their ſons or next heirs, reſerved ſuch a beneficial ſtate to themſelves. And therefore the truth is, that the flood of this uſage came in with perpetuities, ſave that the perpetuity was to make an inheritance like a ſtem for life, and this was to make a ſtem for life like an inheritance: both concurring in this, that they preſume to create phantaſtical eſtates, contrary to the ground of law.

And therefore it is no matter, though it went out with the perpetuities, as it came in, to the end that men that have not the inheritance ſhould not have power to abuſe the inheritance.

And for the miſchief, and conſideration of *bonum publicum*, certainly this clauſe with this oppoſition tendeth but to make houſes ruinous, and to leave no timber upon the ground to build them up again; and therefore let men in God's name, when they eſtabliſh their ſtates, and plant their ſons or kinſmen in the inheritance of ſome portions of their lands, with reſervation of the freehold to themſelves, uſe it, and enjoy it in ſuch ſort, as may tend *ad aedificationem*, and not *ad deſtructionem*; for that is good for poſterity, and for the ſtate in general.

And for the timber of this realm, it is *vivus theſaurus regni*; and it is the matter of our walls, walls not only of our houſes, but of our iſland: ſo as it is a general diſinheriſon to the kingdom to favour that expoſition, which tends to the decay of it, being ſo great already; and to favour waſte when the times themſelves are ſet upon waſte and ſpoil. Therefore ſince the reaſon and authorities of law, and the policy of eſtate do meet, and that thoſe that have, or ſhall have ſuch conveyances, may enjoy the benefit of that clauſe to protect them in a moderate manner, that is, from the penalty of the action; it is both good law and good policy for the kingdom, and not injurious or inconvenient for particulars, to take this clauſe ſtrictly, and therein to affirm the laſt report. And ſo I pray judgment for the plaintiff.

THE ARGUMENT IN Low's CASE of TENURES.

In the King's bench.

THE manor of Alderwasley, parcel of the Duchy, and lying out of the county Palatine was (before the Duchy came to the crown) held of the King by knight's service *in capite*. The land in question was held of the said manor in socage. The Duchy and this manor parcel thereof descended to King Henry IV. King Henry VIII. by letters patent the 19. of his reign, granted this manor to Anthony Low, grandfather of the ward, and then tenant of the land in question, reserving 26l. 10s. rent and fealty, *tantum pro omnibus servitiis*, and this patent is under the Duchy-seal only. The question is, how this tenancy is held, whether *in capite*, or in socage.

The case resteth upon a point, unto which all the questions arising are to be reduced.

The first is, whether this tenancy, being by the grant of the King of the manor to the tenant grown to an unity of possession with the manor, be held as the manor is held, which is expressed in the patent to be in socage.

The second, whether the manor itself be held in socage according to the last reservation; or *in capite* by revivor of the ancient seigniory, which was *in capite* before the Duchy came to the crown.

Therefore my first proposition is, that this tenancy (which without all colour is no parcel of the manor) cannot be comprehended within the tenure reserved upon the manor, but that the law createth a several and distinct tenure thereupon, and that not guided according to the express tenure of the manor, but merely *secundum normam legis*, by the intendment and rule of law, which must be a tenure by knight's service *in capite*.

And my second proposition is, that admitting that the tenure of the tenancy should ensue the tenure of the manor; yet nevertheless the manor itself, which was first held of the crown *in capite*, the tenure suspended by the conquest of the Duchy to the crown, being now conveyed out of the crown under the duchy-seal only (which hath no power to touch or carry any interest, whereof the King was vested in right of the crown) is now so severed and disjoined from the ancient seigniory, which was *in capite*, as the same ancient seigniory is revived, and so the new reservation void; because the manor cannot be charged with two tenures.

The King's tenures may take more hurt by a resolution in law than by many suppressions or concealments.

This case concerneth one of the greatest and fairest flowers of the crown, which is the King's tenures, and that in their creation; which is more than their preservation: for if the rules and maxims of law in the first raising of tenures *in capite* be weakened, this nips the flower in the bud, and may do more hurt by a resolution in law, than the losses, which the King's tenures do daily receive by oblivion or suppression, or the neglect of officers, or the iniquity of jurors, or other like blasts, whereby they are continually shaken: and therefore it behoveth us of the King's counsel to have a special care of this case, as much as in us is, to give satisfaction to the court. Therefore before I come to argue these two points particularly, I will speak something of the favour of law towards tenures *in capite*, as that which will give a force and edge to all that I shall speak afterwards.

No land in the kingdom

The constitution of this kingdom appeareth to be a free monarchy in nothing better than in this; that as there is no land of the subject that is charged to the crown

of England charged by way of tribute, and all land charged by way of tenure.

crown by way of tribute, or tax, or talliage, except it be ſet by parliament: ſo on the other ſide there is no land of the ſubject, but is charged to the crown by tenure, mediate or immediate, and that by the grounds of the common law. This is the excellent temper and commixture of this eſtate, bearing marks of the ſovereignty of the King, and of the freedom of the ſubject from tax, whoſe poſſeſſions are *feodalia*, not *tributaria*.

Tenures, according to the moſt general diviſion, are of two natures, the one containing matter of protection, and the other matter of profit: that of protection is likewiſe double, divine protection and military. The divine protection is chiefly procured by the prayers of holy and devout men; and great pity it is, that it was depraved and corrupted with ſuperſtition. This begot the tenure in frankalmoigne, which though in burthen it is leſs than in ſocage, yet in virtue it is more than knight's ſervice. For we read how, during the while Moſes in the mount held up his hands, the Hebrews prevailed in battel; as well as when Elias prayed, rain came after drought, which made the plough go; ſo that I hold the tenure in frankalmoigne in the firſt inſtitution indifferent to knight's ſervice and ſocage. Settting apart this tenure, there remaineth the other two, that of knight's ſervice, and that of ſocage; the one tending chiefly to defence and protection, the other to profit and maintenance of life. They are all three comprehended in the ancient verſe, *Tu ſemper ora, tu protege, tuque labora*. But between theſe two ſervices, knight's ſervice and ſocage, the law of England makes a great difference: for this kingdom (my lords) is a ſtate neither effeminate, nor merchant-like; but the laws give the honour unto arms and military ſervice, like the laws of a nation, before whom Julius Cæſar turned his back, as their own prophet ſays; *Territa quaeſitis oſtendit terga Britannis*. And therefore howſoever men, upon huſband-like conſiderations of profit, eſteem of ſocage tenures; yet the law that looketh to the greatneſs of the kingdom, and proceedeth upon conſiderations of eſtate, giveth the preheminence altogether to knight's ſervice.

We ſee that the ward, who is ward for knight's ſervice land, is accounted in law diſparaged, if he be tender'd a marriage of the burghers parentage: and we ſee that the knights fees were by the ancient laws the materials of all nobility; for that it appears by diverſe records how many knights fees ſhould by computation go to a barony, and ſo to an earldom. Nay, we ſee that in the very ſummons of parliament, the knights of the ſhire are required to be choſen *milites gladio cinc̃ti*; ſo as the very call though it were to council bears a mark of arms and habiliments of war. To conclude, the whole compoſition of this warlike nation, and the favours of law, tend to the advancement of military virtue and ſervice.

But now farther, amongſt the tenures by knight's ſervice, that of the King *in capite* is the moſt high and worthy: and the reaſon is double; partly becauſe it is held of the King's crown and perſon; and partly becauſe the law createth ſuch a privity between the line of the crown, and the inheritors of ſuch tenancies, as there cannot be an alienation without the King's licence, the penalty of which alienation was by the common law the forfeiture of the ſtate itſelf, and by the ſtatute of E. III. is reduced to fine and ſeiſure. And although this alſo has been unworthily termed by the vulgar (not *capite*) captivity and thraldom; yet that which they count bondage, the law counteth honour, like to the caſe of tenants in tail of the King's advancement, which is a great reſtraint by the ſtatute of 34 H. VIII. but yet by that ſtatute it is imputed for an honour. This favour of law to the tenure by knight's ſervice *in capite* produceth this effect, that whereſoever there is no expreſs ſervice effectually limited, or whereſoever that, which was once limited, faileth, the law evermore ſupplieth a tenure by knight's ſervice *in capite*; if it be a blank once---that the law muſt fill it up, the law ever with her own hand writes, tenure by knight's ſervice *in capite*. And therefore the reſolution was notable by the judges of both benches, that where the King confirmed to his farmers tenants for life, *tenend' per ſervitia debita*, this was a tenure *in capite:* for other ſervices are *ſervitia requiſita*, required by the words of patents or grants; but that only is *ſervitium debitum*, by the rules of law.

44 E. 3 f. 45.

The

The courſe therefore that I will hold in the proof of the firſt main point, ſhall be this. Firſt I will ſhew, maintain, and fortify my former grounds, that whereſoever the law createth the tenure of the King, the law hath no variety, but always raiſeth a tenure *in capite*.

Secondly, that in the caſe preſent, there is not any ſuch tenure expreſſed, as can take place, and exclude the tenure in law, but that there is as it were a lapſe to the law.

And laſtly, I will ſhew in what caſes the former general rule receiveth ſome ſhew of exception; and will ſhew the difference between them and our caſe; wherein I ſhall include an anſwer to all that hath been ſaid on the other ſide.

For my firſt propoſition I will divide into four branches: firſt, I ſay, where there is no tenure reſerved, the law createth a tenure *in capite*; ſecondly, where the tenure is uncertain; thirdly, where the tenure reſerved is impoſſible or repugnant to law; and laſtly, where a tenure once created is afterwards extinct.

For the firſt, if the King give lands and ſay nothing of the tenure, this is a tenure *in capite*; nay, if the King give whiteacre, and blackacre, and reſerves a tenure only of whiteacre, and that a tenure expreſſed to be in ſocage; yet you ſhall not for fellowſhip ſake (becauſe they are in one patent) intend the like tenure of blackacre; but that ſhall be held *in capite*. *Per Priſott in fine* 33 H. 6. f. 7. 8 H. 7. f. 3. b.

So if the King grant land, held as of a manor, with warranty, and a ſpecial clauſe of recompenſe, and the tenant be impleaded, and recover in value, this land ſhall be held *in capite*, and not of the manor.

So if the King exchange the manor of Dale for the manor of Sale, which is held in ſocage, although it be by the word *excambium*; yet that goeth to equality of the ſtate, not of the tenure, and the manor of Dale (if no tenure be expreſſed) ſhall be held *in capite*. So much for ſilence of tenure.

For the ſecond branch, which is incertainty of tenure; firſt, where an *ignoramus* is found by office, this by the common law is a tenure *in capite*, which is moſt for the King's benefit; and the preſumption of law is ſo ſtrong, that it amounts to a direct finding or affirmative, and the party ſhall have a negative or traverſe, which is ſomewhat ſtrange to a thing indefinite. 5 Mar. Dyer. 14 Eliz. Dyer. 306.

So if in ancient time, one held of the King, as of a manor by knight's ſervice, and the land return to the King by attainder, and then the King granteth it *tenend' per fidelitatem tantum*, and it returneth the ſecond time to the King, and the King granteth it *per ſervitia antehac conſueta*; now becauſe of the incertainty, neither ſervice ſhall take place, and the tenure ſhall be *in capite*, as was the opinion of you my lord chief juſtice, where you were commiſſioner to find an office after Auſtin's death. Auſtin's office.

So if the King grant land *tenend' de manerio de Eaſtgreenwich vel de honore de Hampton*; this is void, for the non-certainty, and ſhall be held of the King *in capite*.

For the third branch, if the King limit land to be diſcharged of tenure, as *abſque aliquo inde reddendo*, this is a tenure *in capite*; and yet if one ſhould go to the next, *ad proximum*, it ſhould be a ſocage, for the leaſt is next to none at all: but you may not take the King's grant by argument; but where they cannot take place effectually and punctually, as they are expreſſed, there you ſhall reſort wholly to the judgment of law. 33 H. 6. f. 7.

So if the King grant land *tenend' ſi frankment come il en ſon corone*, this is a tenure *in capite*. 14 H. 6. f. 12.

If land be given to be held of a lordſhip not capable, as of Saliſbury plain, or a corporation not *in eſſe*, or of the manor of a ſubject, this is a tenure *in capite*. Merefeild's caſe.

So if land be given to hold by impoſſible ſervice, as by performing the office of the ſheriff of Yorkſhire (which no man can do but the ſheriff) and fealty for all ſervice, this is a tenure *in capite*.

For the fourth branch, which cometh neareſt to our caſe; let us ſee where a ſeigniory was once, and is after extinguiſhed; this may be in two manners, by releaſe in fact, or by unity of poſſeſſion, which is a releaſe or diſcharge in law.

And therefore let the caſe be, that the King releaſeth to his tenant that holds of him in ſocage; this releaſe is good, and the tenant ſhall hold now *in capite*, for the former tenure being diſcharged, the tenure in law ariſeth. *Vid.* 30 H. 8. Dyer. 8 H. 7. f. 13.

1 E. 3. f. 4. fine accept. So the caſe, which is in 1 E. III. a fine is levied to J. S. in tail, the remainder ouſter to the King, the ſtate tail ſhall be held *in capite*, and the firſt tenancy, if it were in ſocage, by the unity of the tenancy, ſhall be diſcharged, and a new raiſed thereupon: and therefore the opinion, or rather the *quaere* in Dyer no law.

4 et 5 P. M. Thus much for my major propoſition; now for the minor, or the aſſumption, it is this: firſt, that the land in queſtion is diſcharged of tenure by the purchaſe of the manor; then that the reſervation of the ſervice upon the manor cannot poſſibly inure to the tenancy; and then if a corruption be of the firſt tenure, and no generation of the new; then cometh in the tenure *per normam legis*, which is *in capite*.

And the courſe of my proof ſhall be *ab enumeratione partium*, which is one of the cleareſt and moſt forcible kinds of argument.

If this parcel of land be held by fealty and rent *tantum*, either it is the old fealty before the purchaſe of the manor, or it is the new fealty reſerved and expreſſed upon the grant of the manor; or it is a new fealty raiſed by intendment of law in conformity and congruity of the fealty reſerved upon the manor; but none of theſe, *ergo*, etc.

That it ſhould be the old fealty, is void of ſenſe; for it is not *ad eoſdem terminos*. The firſt fealty was between the tenancy and the manor, that tenure is by the unity extinct. Secondly, that was a tenure of a manor, this is a tenor in groſs. Thirdly, the rent of 26 l. 10 s. muſt needs be new, and will you have a new rent with an old fealty? Theſe things are *portenta in lege*; nay I demand, if the tenure of the tenancy (Low's tenure) had been by knight's ſervice, would you have ſaid that had remained? No, but that it was altered by the new reſervation; *ergo* no colour of the old fealty.

That it cannot be the new fealty is alſo manifeſt; for the new reſervation is upon the manor, and this is no part of the manor: for if it had eſcheated to the King in an ordinary eſcheat, or come to him upon a mortmain, in theſe caſes it had come in lieu of the ſeigniory, and been parcel of the manor, and ſo within the reſervation, but clearly not upon a purchaſe in fact.

Again, the reſervation cannot inure, but upon that which is granted; and this tenancy was never granted, but was in the tenant before; and therefore no colour it ſhould come under the reſervation. But if it be ſaid, that nevertheleſs the ſeigniory of that tenancy was parcel of the manor, and is alſo granted; and

6 Eliz. Coke Lib. 3. f. 30. although it be extinct in ſubſtance, yet it may be *in eſſe* as to the King's ſervice: this deſerveth anſwer; for this aſſertion may be colourably inferred out of Carr's caſe.

King Edw. VI. grants a manor, rendring 94 l. rent in fee farm *tenendum de Eaſtgreenwich* in ſocage; and after, Queen Mary granteth theſe rents amongſt other things *tenendum in capite*, and the grantee releaſed to the heir of the tenant; yet the rent ſhall be *in eſſe*, as to the King, but the land (ſaith the book) ſhall be deviſeable by the ſtatute for the whole, as not held *in capite*.

25 Aſſ pl 60. And ſo the caſe of the honour of Pickeringe, where the King granted the bailywick rendring rent; and after granted the honour, and the bailywick became forfeited, and the grantee took forfeiture thereof, whereby it was extinct; yet the rent remaineth as to the King out of the bailywick extinct.

Theſe two caſes partly make not againſt us, and partly make for us: there be two differences that avoid them. Firſt, there the tenures or rents are *in eſſe* in thoſe caſes for the King's benefit, and here they ſhould be *in eſſe* to the King's prejudice, who ſhould otherwiſe have a more beneficial tenure. Again, in theſe caſes the firſt reſervation was of a thing *in eſſe*, at the time of the reſervation; and then there is no reaſon the act ſubſequent of the King's tenant ſhould prejudice the King's intereſt once veſted and ſettled: but here the reſervation was never good, becauſe it is out of a thing extinct in the inſtant.

But the plain reaſon which turneth Carr's caſe mainly for us, is; for that where the tenure is of a rent or ſeigniory, which is afterwards drowned or extinct in the land; yet the law judgeth the ſame rent or ſeigniory to be *in eſſe*, as to ſupport the tenure: but of what? Only of the ſaid rent or ſeigniory, and never of the land itſelf? for the land ſhall be held by the ſame tenure it was before.

And

And ſo is the rule of Carr's caſe, where it is adjudged, that though the rent be held *in capite*, yet the land was nevertheleſs deviſeable for the whole, as no ways charged with that tenure.

Why then, in our caſe, let the fealty be reſerved out of the ſeigniory extinct, yet that toucheth not at all the land: and then of neceſſity the land muſt be alſo held; and therefore you muſt ſeek out a new tenure for the land, and that muſt be *in capite*.

And let this be noted once for all, that our caſe is not like the common caſes of a menalty extinct, where the tenant ſhall hold of the lord, as the mean held before; as where the menalty is granted to the tenant, or where the tenancy is granted to the mean, or where the menalty deſcendeth to the tenant, or where the menalty is forejudged. In all theſe caſes the tenancy, I grant, is held as the menalty was held before, and the difference is becauſe there was an old ſeigniory in being; which remaineth untouched and unaltered, ſave that it is drawn a degree nearer to the land, ſo as there is no queſtion in the world of a new tenure: but in our caſe there was no lord paramount, for the manor itſelf was in the crown, and not held at all, nor no ſeigniory of the manor *in eſſe*; ſo as the queſtion is wholly upon the creation of a new ſeigniory, and not upon the continuance of an old.

For the third courſe, that the law ſhould create a new diſtinct tenure by fealty of this parcel, guided by the expreſs tenure upon the manor; it is the probableſt courſe of the three: but yet if the former authorities, I have alledged, be well underſtood and marked, they ſhew the law plainly, that it cannot be; for you ſhall ever take the King's grant *ad idem*, and not *ad ſimile*, or *ad proximum*: no more than in the caſe of the *abſque aliquo reddendo*, or as free as the crown; who would not ſay that in thoſe caſes it ſhould amount to a ſocage tenure? for *minimum eſt nihilo proximum*; and yet they are tenures by knight's ſervice *in capite*. So if the King by one patent paſs two acres, and a fealty reſerved but upon the one of them, you ſhall not reſort to this *ut expreſſum ſervitium regat, vel declaret tacitum*. No more ſhall you in our caſe imply that the expreſs tenure reſerved upon the manor ſhall govern, or declare the tenure of the tenancy, or controul the intendment of law concerning the ſame.

Now will I anſwer the caſes, which give ſome ſhadow on the contrary ſide, and ſhew they have their particular reaſons, and do not impugn our caſe.

Firſt, if the King have land by attainder of treaſon, and grant the land to be held of himſelf, and of other lords, this is no new tenure *per normam legis communis*; but the old tenure *per normam ſtatuti*, which taketh away the intendment of the common law; for the ſtatute directeth it ſo, and otherwiſe the King ſhall do a wrong.

So if the King grant land parcel of the demeſne of a manor *tenendum de nobis*, or reſerving no tenure at all, this is a tenure of the manor or of the honour, and not *in capite*: for here the more vehement preſumption controuleth the leſs; for the law doth preſume the King hath no intent to diſmember it from the manor, and ſo to loſe his court and the perquiſites.

So if the King grant land *tenendum* by a roſe *pro omnibus ſervitiis*; this is not like the caſes of the *abſque aliquo inde reddendo*, or as free as the crown: for *pro omnibus ſervitiis* ſhall be intended for all expreſs ſervice; whereas fealty is incident, and paſſeth tacit, and ſo it is no impoſſible or repugnant reſervation. 25 H. 6. f. 56 9.

The caſe of the frankalmoigne, I mean the caſe where the King grants lands of the Templers to J. S. to hold as the Templers did, which cannot be frankalmoigne; and yet hath been ruled to be no tenure by knight's ſervice *in capite*, but only a ſocage tenure, is eaſily anſwered; for that the frankalmoigne is but a *ſpecies* of a tenure in ſocage with a privilege, ſo the privilege ceaſeth, and the tenure remains. This is no frankalmoigne. Wood's caſe.

To conclude therefore, I ſum up my arguments thus. My major is, where *calamus legis* doth write the tenure, it is knight's ſervice *in capite*. My minor is, this tenure is left to the law; *ergo* this tenure is *in capite*.

For the ſecond point, I will firſt ſpeak of it according to the rules of the common law, and then upon the ſtatutes of the duchy.

First I do grant, that where a ſeigniory and a tenancy, or a rent and land, or trees and land, or the like primitive and ſecondary intereſt are conjoined in one perſon, yea though it be in *autre droit*; yet if it be of like perdurable eſtate, they are ſo extinct, as by act in law they may be revived, but by grant they cannot.

For if a man have a ſeigniory in his own right, and the land deſcend to his wife, and his wife dieth without iſſue, the ſeigniory is revived; but if he will make a feoffment in fee, ſaving his rent, he cannot do it. But there is a great difference, and let it be well obſerved, between *autre capacitie* and *autre droit*; for in caſe of *autre capacitie* the intereſts are *contigua*, and not *continua*, conjoined, but not confounded. And therefore if the maſter of an hoſpital have a ſeigniory, and the mayor and commonalty of St. Albans have a tenancy, and the maſter of the hoſpital be made mayor, and the mayor grant away the tenancy under the ſeal of the mayor and commonalty, the ſeigniory of the hoſpital is revived.

So between natural capacity and politick, if a man have a ſeigniory to him and his heirs, and a biſhop is tenant, and the lord is made biſhop, and the biſhop before the ſtatute grants away the land under the chapter's ſeal, the ſeigniory is revived.

The ſame reaſon is between the capacity of the crown and the capacity of the duchy, which is in the King's natural capacity, though illuſtrate with ſome privileges of the crown; if the King have the ſeigniory in the right of his crown, and the tenancy in the right of the duchy (as our caſe is) and make a feoffment of the tenancy, the tenure muſt be revived; and this is by the ground of the common law. But the caſe is the more ſtrong by reaſon of the ſtatute of 1 H. IV. 3 H. V. and 1 H. VII. of the duchy, by which the duchy-ſeal is enabled to paſs lands of the duchy, but no ways to touch the crown; and whether the King be in actual poſſeſſion of the thing that ſhould paſs, or have only a right, or a condition, or a thing in ſuſpenſe (as our caſe is) all is one; for that ſeal will not extinguiſh ſo much as a ſpark of that which is in the right of the crown; and ſo a plain revivor.

And if it be ſaid that a miſchief will follow; for that upon every duchy patent men ſhall not know how to hold, becauſe men muſt go back to the ancient tenure, and not reſt in the tenure limited: for this miſchief there grows an eaſy remedy, which likewiſe is now in uſe, which is to take both ſeals, and then all is ſafe.

Secondly, as the King cannot under the duchy-ſeal grant away his ancient ſeigniory in the right of his crown; ſo he cannot make any new reſervation by that ſeal, and ſo of neceſſity it falleth to the law to make the tenure: for every reſervation muſt be of the nature of that that paſſeth, as a dean and chapter cannot grant land of the chapter, and reſerve a rent to the dean and his heirs, nor *è converſo*: nor no more can the King grant land of the duchy under that ſeal, and reſerve a tenure to the crown: and therefore it is warily put in the end of the caſe of the duchy in the commentaries, where it is ſaid, if the King make a feoffment of the duchy land, the feoffee ſhall hold *in capite*; but not a word of that it ſhould be by way of expreſs reſervation, but upon a feoffment ſimply, the law ſhall work it and ſupply it.

To conclude, there is direct authority in the point, but that it is *via verſa*; and it was the biſhop of Saliſbury's caſe: the King had in the right of the duchy a rent iſſuing out of land, which was monaſtery land, which he had in the right of the crown, and granted away the land under the great ſeal to the biſhop; and yet nevertheleſs the rent continued to the duchy, and ſo upon great and grave advice it was in the duchy decreed: ſo as your lordſhip ſeeth, whether you take the tenure of the tenancy, or the tenure of the manor, this land muſt be held *in capite*. And therefore, *etc.*

THE

CASE

OF

REVOCATION of USES.

In the King's bench.

The caſe ſhortly put, without names or dates more than of neceſſity, is this.

SIR John Stanhope conveys the manor of Burrough-aſh to his lady for part of her jointure, and, intending (as is manifeſt) not to reſtrain himſelf, nor his ſon, from diſpoſing ſome proportion of that land according to their occaſions, ſo as my lady were at no loſs by the exchange, inſerteth into the conveyance a power of revocation and alteration in this manner; provided that it ſhall be lawful for himſelf and his ſon ſucceſſively to alter, and make void the uſes, and to limit and appoint new uſes, ſo it exceed not the value of 20 l. to be computed after the rents then anſwered; and that immediately after ſuch declaration, or making void, the feoffees ſhall ſtand ſeiſed to ſuch new uſes; *Ita quod* he or his ſon, within ſix months after ſuch declaration, or making void, ſhall aſſure, within the ſame town, *tantum terrarum et tenementorum, et ſimilis valoris*, as were ſo revoked, to the uſes expreſſed in the firſt conveyance.

Sir John Stanhope his ſon revokes the land in Burrough-aſh, and other parcels not exceeding the value of 20 l. and within ſix months aſſures to my lady and to the former uſes Burton-joice, and other lands; and the jury have found that the lands revoked contain twice ſo much in number of acres, and twice ſo much in yearly value, as the new lands; but yet that the new lands are rented at 21 l. and find the lands of Burrough-aſh, now out of leaſe formerly made: and that no notice of this new aſſurance was given before the ejectment, but only that Sir John Stanhope had by word told his mother, that ſuch an aſſurance was made, not ſhewing or delivering the deed.

The queſtion is, Whether Burrough-aſh be well revoked? Which queſtion divides itſelf into three points.

Firſt, whether the *ita quod* be a void and idle clauſe? for if ſo, then there needs no new aſſurance, but the revocation is abſolute *per ſe*.

The next is, if it be an effectual clauſe, whether it be purſued or no? wherein the queſtion will reſt, whether the value of the re-aſſured lands ſhall be only computed by rents?

And the third is, if in other points it ſhould be well purſued, yet whether the revocation can work until a ſufficient notice of the new aſſurance?

And I ſhall prove plainly, that *ita quod* ſtands well with the power of revocation; and if it ſhould fall to the ground, it draws all the reſt of the clauſe with it, and makes the whole void, and cannot be void alone by itſelf.

I ſhall prove likewiſe that the value muſt needs be accounted not a tale value, or an arithmetical value by the rent, but a true value in quantity and quality.

And laſtly, that a notice is of neceſſity, as this caſe is.

I will not deny, but it is a great power of wit to make clear things doubtful; but it is the true uſe of wit to make doubtful things clear, or at leaſt to maintain things that are clear, to be clear, as they are. And in that kind I conceive my labour will be in this caſe, which I hold to be a caſe rather of novelty than difficulty, and therefore may require argument, but will not endure much argument: but to ſpeak plainly to my underſtanding, as the caſe hath no equity in it (I might ſay piety) ſo it hath no great doubt in law.

First therefore this it is, that I affirm, that the clauſe, *ſo that, ita quod*, containing the recompenſe, governs the clauſe precedent of the power, and that it makes it wait and expect otherwiſe than as by way of inception, but the effect and operation is ſuſpended, till that part alſo be performed: and if otherwiſe, then I ſay plainly, you ſhall not conſtrue by fractions; but the whole clauſe and power is void not *in tanto*, but *in toto*. Of the firſt of them I will give four reaſons.

The firſt reaſon is, that the wiſdom of the law uſeth to tranſpoſe words according to the ſenſe; and not ſo much to reſpect how the words do take place, but how the acts, which are guided by thoſe words, may take place.

Hill and Graunger's caſe, com. f. 171.

Hill and Graunger's caſe comment. 171. A man in Auguſt makes a leaſe rendering 10 l. rent yearly to be paid at the feaſts of Annunciation and Michaelmas: theſe words ſhall be inverted by law, as if they had been ſet thus, at Michaelmas and the Annunciation: for elſe he can not have a rent yearly; for there will be fourteen months to the firſt year.

Fitz-Williams's caſe, 2 Jac Co. p. 6. f. 33.

Fitz-Williams's caſe 2 Ja. Co. p. 6. f. 33. it was contained in an indenture of uſes, that Sir William Fitz-Williams ſhould have power to alter and change, revoke, determine, and make void the uſes limited: the words are placed diſorderly; for it is in nature firſt to determine the uſes, and after to change them by limitation of new. But the chief queſtion being in the book, whether it might be done by the ſame deed; it is admitted and thought not worth the ſpeaking to, that the law ſhall marſhal the acts againſt the order of the words, that is, firſt to make void, and then to limit.

So if I convey land and covenant with you to make farther aſſurance, ſo that you require it of me, there though the requeſt be placed laſt, yet it muſt be acted firſt.

So if I lett land to you for a term, and ſay farther, it ſhall be lawful for you to take twenty timber-trees to erect a new tenement upon the land, ſo that my bailiff do aſſign you where you ſhall take them; here the aſſignment, though laſt placed, muſt precede. And therefore the Grammarians do infer well upon the word *period*, which is a full and compleat clauſe or ſentence, that it is *complexus orationis circularis:* for as in a circle there is not *prius* nor *poſterius*, ſo in one ſentence you ſhall not reſpect the placing of words; but though the words lie in length, yet the ſenſe is round, ſo as *prima erunt noviſſima, et noviſſima prima*. For though you cannot ſpeak all at once ſo, yet you muſt conſtrue and judge upon all at once.

To apply this; I ſay theſe words, *ſo that*, though *loco et textu poſteriora*, yet they be *poteſtate et ſenſu priora:* as if they had been penned thus, that it ſhall be lawful for Sir Thomas Stanhope, ſo that he aſſure lands, *etc.* to revoke; and what difference between, ſo that he aſſure, he may revoke; or, he may revoke, ſo that he aſſure: for you muſt either make the *ſo that* to be precedent or void, as I ſhall tell you anon. And therefore the law will rather invert the words, than pervert the ſenſe.

But it will be ſaid, that in the caſes I put, it is left indefinite, when the act laſt limited ſhall be performed; and ſo the law may marſhal it, as may ſtand with poſſibility; and ſo if it had been in this caſe no more but (*ſo that* Sir Thomas or John ſhould aſſure new lands) and no time ſpoken of, the law might have intended it precedent. But in this caſe it is preciſely put to be at any time within ſix months after the declaration, and therefore you cannot vary in the times.

To this I anſwer, that the new aſſurance muſt be in deed in time after the inſtrument or deed of the declaration; but on the other ſide it muſt be time precedent to the operation of the law, by determining the uſes thereupon: ſo as it is not to be applied ſo much to the declaration itſelf, but to the warrant of the declaration. It ſhall be lawful, ſo that, *etc.* And this will appear more plainly by my ſecond reaſon, to which now I come; for as for the cavillation upon the word *immediately*, I will ſpeak to it after.

My ſecond reaſon therefore is out of the uſe and ſignification of this conjunction or bond of ſpeech, *ſo that:* for no man will make any great doubt of it, if the words had been *ſi*, if Sir Thomas ſhall within ſix months of ſuch declaration convey; but that it muſt have been intended precedent; yet if you mark it well, theſe words *ita quod* and *ſi*, howſoever in propriety the *ita quod* may ſeem ſubſequent, and the *ſi* precedent, yet they both bow to the ſenſe.

4 E. 6. Pl. Com. Colthurſt's caſe.

So we ſee in 4 Edw. VI. Colthurſt's caſe, a man leaſeth to J. S. a houſe, *ſi ipſe vellet habitare, et reſidens eſſe*; there the word *ſi* amounts to a condition ſubſequent;

quent; for he could not be reſident before he took the ſtate; and ſo *via verſa* may *ita quod* be precedent, for elſe it muſt be idle or void. But I go farther, for I ſay *ita quod*, though it be good words of condition, yet more properly it is neither condition, precedent, nor ſubſequent, but rather a qualification, or form, or adherent to the acts, whereto it is joined, and made part of their eſſence, which will appear evidently by other caſes. For allow it had been thus, *ſo that the deed of declaration be inrolled* within ſix months, this is all one, as by deed inrolled within ſix months, as it is ſaid in Digg's caſe 42 Eliz. f. 173. that by deed indented to be inrolled is all one with deed indented and inrolled. It is but a *modus faciendi*, a deſcription, and of the ſame nature is the *ita quod*: ſo if it had been thus, it ſhall be lawful for Sir Thomas to declare, ſo that the declaration be with the conſent of my lord chief juſtice, is it not all one with the more compendious form of penning, that Sir Thomas ſhall declare with the conſent of my lord chief juſtice? And if it had been thus, ſo that Sir John within ſix months after ſuch declaration ſhall obtain the conſent of my lord chief juſtice, ſhould not the uſes have expected? But theſe you will ſay are forms and circumſtances annexed to the conveyance required; why ſurely any collateral matter coupled by the *ita quod* is as ſtrong? If the *ita quod* had been, that Sir John Stanhope within ſix months ſhould have paid my lady 1000 l. or entered into bond never more to diſturb her, or the like, all theſe make but one entire idea or notion, how that his power ſhould not be categorical, or ſimple at pleaſure, but hypothetical, and qualified, and reſtrained, that is to ſay, not the one without the other, and they are parts incorporated into the nature and eſſence of the authority itſelf.

Digg's caſe, 42 Eliz. Co. P. 1. f. 173.

The third reaſon is the juſtice of the law in taking words ſo, as no material part of the parties intent periſh: for, as one ſaith, *praeſtat torquere verba quam homines*, better wreſt words out of place, than my lady Stanhope out of her jointure, that was meant to her. And therefore it is elegantly ſaid in Fitz-Williams's caſe, which I vouched before, though words be contradictory, and (to uſe the phraſe of the book) *pugnant tanquam ex diametro*; yet the law delighteth to make atonement, as well between words, as between parties, and will reconcile them, ſo as they may ſtand, and abhorreth a *vacuum*, as well as nature abhorreth it; and as nature to avoid a *vacuum* will draw ſubſtances contrary to their propriety, ſo will the law draw words. Therefore ſaith Littleton, if I make a feoffment *reddendo* rent to a ſtranger, this is a condition to the feoffor, rather than it ſhall be void, which is quite croſs; it ſounds a rent, it works a condition, it is limited to a third perſon, it inureth to the feoffor; and yet the law favoureth not conditions, but to avoid a *vacuum*.

So in the caſe of 45 E. III. a man gives land in frank-marriage, the remainder in fee. The frank-marriage is firſt put, and that can be but by tenure of the donor; yet rather than the remainder ſhould be void, though it be laſt placed, the frank-marriage being but a privilege of eſtate ſhall be deſtroyed.

45 E. 3.

So 33 H. VI. Treſsham's caſe: the King granteth a wardſhip, before it fall; good, becauſe it cannot inure by covenant, and if it ſhould not be good by plea, as the book terms it, it were void: ſo that, no, not in the King's caſe, the law will not admit words to be void.

So then the intent appears moſt plainly, that this act of Sir John ſhould be *actus geminus*, a kind of twine to take back, and to give back, and to make an exchange, and not a reſumption; and therefore upon a conceit of repugnancy, to take the one part, which is the privation of my lady's jointure, and not the other, which is the reſtitution or compenſation, were a thing utterly injurious in matter, and abſurd in conſtruction.

The fourth reaſon is out of the nature of the conveyance, which is by way of uſe, and therefore ought to be conſtrued more favourably according to the intent, and not literally or ſtrictly: for although it be ſaid in Frene and Dillon's caſe, and in Fitz-Williams's caſe, that it is ſafe ſo to conſtrue the ſtatute of 27 H. VIII. as that uſes may be made ſubject to the rules of the common law, which the profeſſors of the law do know, and not leave them to be extravagant and irregular; yet if the late authorities be well marked, and the reaſon of them, you ſhall find this difference, that uſes in point of operation are reduced to a kind of conformity with the rules of the common law, but that in point of

expoſition of words, they retain ſomewhat of their ancient nature, and are expounded more liberally according to the intent; for with that part the ſtatute of 27, doth not meddle. And therefore if the queſtion be, whether a bargain and ſale upon condition be good to reduce the ſtate back without an entry? or whether if a man make a feoffment in fee to the uſe of John a Style for years, the remainder to the right heirs of John a Downe, this remainder be good or no? theſe caſes will follow the grounds of the common law for poſſeſſions, in point of operation; but ſo will it not be in point of expoſition.

For if I have the manor of Dale, and the manor of Sale lying both in Vale, and I make a leaſe for life of them both, the remainder of the manor of Dale, and all other my lands in Vale to John a Style, the remainder of the manor of Sale to John a Downe, this latter remainder is void, becauſe it comes too late, the general words having carried it before to John a Style. But put it by way of uſe a man makes a feoffment in fee of both manors, and limits the uſe of the manor of Dale, and all other the lands in Vale, to the uſe of himſelf, and his wife for her jointure, and of the manor of Sale to the uſe of himſelf alone. Now his wife ſhall have no jointure in the manor of Sale, and ſo was it judged in the caſe of the manor of Odiam.

The caſe of the manor of Odiam.

And therefore our caſe is more ſtrong, being by way of uſe, and you may well conſtrue the latter part to controul and qualify the firſt, and to make it attend and expect; nay, it is not amiſs to ſee the caſe of Peryman 41 Eliz. Coke p. 5. f. 84. where by a cuſtom a livery may expect; for the caſe was, that in the manor of Portcheſter, the cuſtom was, that a feoffment of land ſhould not be good, except it were preſented within a year in the court of the manor, and there ruled that it was but *actus inchoatus*, till it was preſented; now if it be not merely againſt reaſon of law, that ſo ſolemn a conveyance as livery, which keeps ſtate (I tell you) and will not wait, ſhould expect a farther perfection, *a fortiori* may a conveyance in uſe or declaration of uſe, receive a conſummation by degrees, and ſeveral acts. And thus much for the main point.

41 Eliz. Co. p. 5. f. 84.

Now for the objection of the word *immediate*, it is but light and a kind of ſophiſtry. They ſay that the words are, that the uſes ſhall riſe immediately after the declaration, and we would have an interpoſition of an act between, viz. that there ſhould be a declaration firſt, then a new aſſurance within the ſix months; and laſtly, the uſes to riſe: whereunto the anſwer is eaſy; for we have ſhewed before, that the declaration and the new aſſurance are in the intent of him that made the conveyance, and likewiſe in eye of law, but as one compounded act. So as *immediately after the declaration* muſt be underſtood of a perfect and effectual declaration, with the adjuncts and accouplements expreſſed.

So we ſee in 49 E. III. f. 11. if a man be attainted of felony, that holds lands of a common perſon, the King ſhall have his year, day and waſte: but when? Not before an office found: and yet the words of the ſtatute of *praerogativa regis* are, *rex habebit catalla felonum, et ſi ipſi habent liberum tenementum, ſtatim capiatur in manus domini, et rex habebit annum, diem et vaſtum*: and here the word *ſtatim* is underſtood of the effectual and lawful time, that is, after office found.

49 E. 3. f. 11.

So in 2 H. IV. f. 17. it appears that by the ſtatute of Acton Burnell, if the debt be acknowledged, and the day paſt that the goods of the debtors ſhall be ſold *ſtatim*, in French *maintenant*; yet nevertheleſs this *ſtatim* ſhall not be underſtood, before the proceſs of law requiſite paſſed, that is, the day compriſed in the extent.

2 H. 4 f. 17.

So it is ſaid 27 H. VIII. f. 19. by Audley the chancellor, that the preſent tenſe ſhall be taken for the future; *a fortiori*, ſay I, the immediate future tenſe may be taken for a diſtant future tenſe: as if I be bound that my ſon being of the age of twenty one years ſhall marry your daughter, and that he be now of twelve years; yet this ſhall be underſtood, when he ſhall be of the age of twenty one years. And ſo in our caſe *immediately after the declaration* is intended when all things ſhall be performed, that are coupled with the ſaid declaration.

27 H. 8 f. 19

But in this I doubt I labour too much; for no man will be of opinion, that it was intended that the lady Stanhope ſhould be ſix whole months without either the old jointure or the new; but that the old ſhould expect until the new were ſettled without any *interim*. And ſo I conclude this courſe of atonements (as

Fitz-Williams's caſe calls it) whereby I have proved, that all the words, by a true marſhalling of the acts, may ſtand according to the intent of the parties.

I may add *tanquam ex abundanti*, that if both clauſes do not live together, they muſt both die together; for the law loves neither fractions of eſtates, nor fractions of conſtructions: and therefore in Jermin and Aſkew's caſe, 37 Eliz. a man did deviſe lands in tail with proviſo, that if the deviſee did attempt to alien, his eſtate ſhould ceaſe, as if he were naturally dead. Is it ſaid there, that the words, *as if he were naturally dead*, ſhall be void, and the words, *that his eſtate ſhall ceaſe*, good? No, but the whole clauſe ſhall be void. And it is all one reaſon of a *ſo that*, as of an *as if*, for they both ſuſpend the ſentence. Jermin and Askew's caſe.

So if I make a leaſe for life, upon condition he ſhall not alien, nor take the profits, ſhall this be good for the firſt part, and void for the ſecond? No, but it ſhall be void for both.

So if the power of declaration of uſes had been thus penn'd, that Sir John Stanhope might by his deed indented declare new uſes, ſo that the deed were inrolled before the mayor of St. Albans, who hath no power to take inrollments; or ſo that the deed were made in ſuch ſort, as might not be made void by parliament: in all theſe and the like caſes the impoſſibility of the laſt part doth ſtrike upwards, and infect, and deſtroy the whole clauſe. And therefore, that all the words may ſtand, is the firſt and true courſe; that all the words be void, is the ſecond and probable; but that the revoking part ſhould be good, and the aſſuring part void, hath neither truth nor probability.

Now come I to the ſecond point, how this value ſhould be meaſured, wherein methinks you are as ill a meaſurer of values, as you are an expounder of words; which point I will divide, firſt conſidering what the law doth generally intend by the word *value*; and ſecondly to ſee what ſpecial words may be in theſe clauſes, either to draw it to a value of a preſent arrentation, or to underſtand it of a juſt and true value.

The word *value* is a word well known to the law, and therefore cannot be (except it be willingly) miſunderſtood. By the common law there is upon a warranty a recovery in value. I put the caſe therefore that I make a feoffment in fee with warranty of the manor of Dale, being worth 20 l. *per annum*, and then in leaſe for 20 s. The leaſe expires (for that is our caſe, though I hold it not needful) the queſtion is, whether upon an eviction there ſhall not be recovered from me land to the value of 20 l.

So if a man give land in frank-marriage then rented at 40 l. and no more worth; there deſcendeth other lands, lett perhaps for a year or two for 20 l. but worth 80 l. ſhall not the donee be at liberty to put this land in hotchpotch?

So if two parceners be in tail, and they make partition of lands equal in rent, but far unequal in value, ſhall this bind their iſſues? By no means; for there is no calendar ſo falſe to judge of values as the rent, being ſometimes improved, ſometimes ancient, ſometimes where great fines have been taken, ſometimes where no fines; ſo as in point of recompenſe you were as good put falſe weights into the hands of the law, as to bring in this interpretation of value by a preſent arrentation. But this is not worth the ſpeaking to in general; that which giveth colour, is the ſpecial words in the clauſe of revocation, that the 20 l. value ſhould be according to the rents then anſwered; and therefore that there ſhould be a correſpondence in the computation likewiſe of the recompenſe. But this is ſo far from countenancing that expoſition, as, well noted, it croſſeth it; for *oppoſita juxta ſe poſita magis eluceſcunt*: firſt, it may be the intent of Sir Thomas, in the firſt clauſe, was double, partly to exclude any land in demeſne, partly knowing the land was double, and as ſome ſay quadruple, better than the rent, he would have the more ſcope of revocation under his 20 l. value.

But what is this to the clauſe of recompenſe? firſt, are there any words *ſecundum computationem prædictam*? There are none. Secondly, doth the clauſe reſt upon the words *ſimilis valoris*? No, but joineth *tantum et ſimilis valoris*: confound not predicaments; for they are the mere-ſtones of reaſon. Here is both quantity and quality; nay he ſaith farther within the ſame towns. Why, marry, it is ſomewhat to have mens poſſeſſions lie about them, and not diſperſed. So it muſt be as much, as good, as near; ſo plainly doth the intent appear, that my lady ſhould not be a loſer.

[For the point of the notice, it was diſcharged by the court.]

THE JURISDICTION of the MARCHES.

The effect of the first argument of the King's Solicitor-general, in maintaining the jurisdiction of the Council of the marches over the four shires.

THE question for the present is only upon the statute of 32 H. VIII. and though it be a great question, yet it is contracted into small room; for it is but a true construction of a monosyllable, the word *march*.

The exposition of all words resteth upon three proofs, the propriety of the word, and the matter precedent, and subsequent.

Matter precedent concerning the intent of those that speak the words, and matter subsequent touching the conceit and understanding of those that construe and receive them.

First therefore as to *vis termini*, the force and propriety of the word; this word *marches* signifieth no more but limits, or confines, or borders, in Latin *limites*, or *confinea*, or *contermina*; and thereof was derived at the first *marchio*, a marquess, which was *comes limitaneus*.

Now these limits cannot be *linea imaginaria*, but it must have some contents and dimension, and that can be no other but the counties adjacent: and for this construction we need not wander out of our own state, for we see the counties of Northumberland, Cumberland, and Westmoreland, lately the borders upon Scotland. Now the middle shires were commonly called the east, west, and middle *marches*.

To proceed therefore to the intention of those that made the statute, in the use of this word; I shall prove that the parliament took it in this sense by three several arguments.

The first is, that otherwise the word should be idle; and it is a rule, *verba sunt accipienda, ut sortientur effectum:* for this word *marches*, as is confessed on the other side, must be either for the counties marches, which is our sense, or the lordships marchers, which is theirs; that is, such lordships, as by reason of the incursions and infestations of the Welsh in ancient time, were not under the constant possession of either dominion, but like the bateable ground where the war played. Now if this latter sense be destroyed, then all equivocation ceaseth.

That it is destroyed, appears manifestly by the statute of 27 H. VIII. made seven years before the statute of which we dispute; for by that statute all the lordships marchers are made shire ground, being either annexed to the ancient counties of Wales, or to the ancient counties of England, or erected into new counties, and made parcel of the dominion of Wales and so no more marches after the statute of 27; so as there were no marches in that sense at the time of the making of the statute of 34.

The second argument is from the comparing of the place of the statute, whereupon our doubt riseth (viz.) that there shall be and remain a lord president and council in the dominion of Wales and the marches of the same, *etc.* with another place of the same statute, where the word *marches* is left out; for the rule is, *oppositа juxta se posita magis eluceſcunt*. There is a clause in the statute, which gives power and authority to the King to make and alter laws for the weal of his subjects of his dominion of Wales; there the word *marches* is omitted, because it was not thought reasonable to invest the King with a power to alter the laws, which is the subjects birthright, in any part of the realm of *England*; and therefore by the omission of the word *marches* in that place you may manifestly collect the signification of the word in the other, that is to be meant of the four counties of England.

The third argument which we will use is this: the council of the marches was not erected by the act of parliament, but confirmed; for there was a president and council long before in E. IV. his time, by matter yet appearing; and it is evident upon the statute itself, that in the very clause which we now handle, it referreth twice to the usage, *as heretofore hath been used.*

This then I infer, that whatſoever was the King's intention in the firſt erection of this court, was likewiſe the intention of the parliament in the eſtabliſhing thereof, becauſe the parliament builded but upon an old foundation.

The King's intention appeareth to have had three branches, whereof every of them doth manifeſtly comprehend the four ſhires.

The firſt was the better to bridle the ſubject of Wales, which at that time was not reclaimed: and therefore it was neceſſary for the preſident and council there to have juriſdiction and command over the Engliſh ſhires; becauſe that by the aid of them, which were undoubted good ſubjects, they might the better govern and ſuppreſs thoſe that were doubtful ſubjects.

And if it be ſaid, that it is true, that the four ſhires were comprehended in the commiſſion of *oyer* and *terminer*, for the ſuppreſſing of riots and miſdemeanors, but not for the juriſdiction of a court of equity; to that I anſwer, that their commiſſion of *oyer* and *terminer* was but *gladius in vagina*, for it was not put in practice amongſt them; for even in puniſhment of riots and miſdemeanors, they proceeded not by their commiſſion of *oyer* and *terminer* by way of jury, but as a council by way of examination. And again it was neceſſary to ſtrengthen that court for their better countenance with both juriſdictions, as well civil as criminal, for *gladius gladium juvat*.

The ſecond branch of the King's intention was to make a better equality of commerce, and intercourſe in contracts and dealings between the ſubjects of Wales and the ſubjects of England; and this of neceſſity muſt comprehend the four ſhires: for otherwiſe, if the ſubject of England had been wronged by the Welſh on the ſides of Wales, he might take his remedy nearer hand. But if the ſubject of Wales, for whoſe weal and benefit the ſtatute was chiefly made, had been wronged by the Engliſh in any of the ſhires, he might have ſought his remedy at Weſtminſter.

The third branch of the King's intent was to make a convenient dignity and ſtate for the manſion and reſiance of his eldeſt ſon, when he ſhould be created Prince of Wales, which likewiſe muſt plainly include the four ſhires: for otherwiſe to have ſent *primogenitum Regis* to a government, which without the mixture of the four ſhires (as things then were) had more peril than honour or command; or to have granted him only a power of lieutenancy in thoſe ſhires, where he was to keep his ſtate, not adorn'd with ſome authority civil, had not been convenient.

So that here I conclude the ſecond part of that I am to ſay touching the intention of the parliament precedent.

Now touching the conſtruction ſubſequent, the rule is good, *optimus legum interpres conſuetudo*; for our labour is not to maintain an uſage againſt a ſtatute, but by an uſage to expound a ſtatute; for no man will ſay, but the word *marches* will bear the ſenſe that we give it.

This uſage or cuſtom is fortified by four notable circumſtances; firſt, that it is ancient and not late, or recent; ſecondly, it is authorized and not popular, or vulgar; thirdly, that it hath been admitted and quiet, and not litigious or interrupted; and fourthly, when it was brought in queſtion, which was but once, it hath been affirmed *judicio controverſo*.

For the firſt, there is record of a preſident and council, that hath exerciſed and practiſed juriſdiction in theſe ſhires, as well ſixty years before the ſtatute, viz. ſince 18 E. IV. as the like number of years ſince: ſo that it is *Janus bifrons*, it hath a face backwards from the ſtatute, as well as forwards.

For the ſecond, it hath received theſe allowances by the practice of that court, by ſuits originally commenced there, by remanding from the courts of Weſtminſter, when cauſes within thoſe ſhires have been commenced here above; ſometimes in chancery, ſometimes in the ſtar-chamber, by the admittance of diverſe great learned men, and great judges, that have been of that council, and exerciſed that juriſdiction; as at one time Bromley, Morgan, and Brook, being the two chief juſtices, and chief baron, and diverſe others; by the King's learned council, which always were called to the penning of the King's inſtructions; and laſtly, by the King's inſtructions themſelves, which though they be not always extant, yet it is manifeſt that ſince 17 H. VIII. when

Princeſs

Princeſs Mary went down, that the four ſhires were ever comprehended in the inſtructions, either by name, or by that that amounts to ſo much. So as it appears that this uſage or practice hath not been an obſcure cuſtom practiſed by the multitude, which is many times erroneous, but authorized by the judgment and conſent of the ſtate: for as it is *vera vox* to ſay, *maximus erroris populus magiſter*; ſo it is *dura vox* to ſay, *maximus erroris princeps magiſter*.

For the third, it was never brought in queſtion till 16 Eliz. in the caſe of one Wynde.

And for the fourth, the controverſy being moved in that caſe, it was referred to Gerrard attorney, and Bromley ſolicitor, which was afterwards chancellor of England, and had his whole ſtate of living in Shropſhire and Worceſter, and by them reported to the lords of the council in the ſtar-chamber, and upon their report decreed, and the juriſdiction affirmed.

Laſtly, I will conclude with two manifeſt badges and tokens, though but external yet violent in demonſtration, that theſe four ſhires were underſtood by the word *marches*; the one the denomination of that council, which was ever in common appellation termed and ſtyled *the council* of the *marches*, or in the *marches*, rather than the council of Wales, or in Wales, and *denominatio eſt a digniore*. If it had been intended of lordſhips marchers, it had been as if one ſhould have called my lord mayor, my lord mayor of the ſuburbs. But it was plainly intended of the four Engliſh ſhires, which indeed were the more worthy.

And the other is of the perpetual reſiance and manſion of the council, which was evermore in the ſhires; and to imagine that a court ſhould not have juriſdiction where it ſitteth, is a thing utterly improbable, for they ſhould be *tanquam piſcis in arido*.

So as upon the whole matter, I conclude that the word *marches* in that place by the natural ſenſe, and true intent of the ſtatute, is meant of the four ſhires.

The effect of that, that was ſpoken by ſerjeant Hutton and ſerjeant Harris, in anſwer of the former argument, and for the excluding of the juriſdiction of the marches in the four ſhires.

THAT, which they both did deliver, was reduced to three heads:

The firſt to prove the uſe of the word *marches* for lordſhips marchers.

The ſecond to prove the continuance of that uſe of the word, after the ſtatute of 27, that made the lordſhips marchers ſhire-grounds; whereupon it was inferred, that though the marches were deſtroyed in nature, yet they remained in name.

The third was ſome collections they made upon the ſtatute of 34; whereby they inferred, that that ſtatute intended that word in that ſignification.

For the firſt, they did alledge diverſe ſtatutes before 27 H. VIII, and diverſe book-caſes of law in print, and diverſe offices and records, wherein the word *marches* of Wales was underſtood of the lordſhips marchers.

They ſaid farther, and concluded, that whereas we ſhew our ſenſe of the word but rare, they ſhew theirs common and frequent; and whereas we ſhew it but in a vulgar uſe and acceptation, they ſhew theirs in a legal uſe in ſtatutes, authorities of books, and ancient records.

They ſaid farther, that the example we brought of marches upon Scotland, was not like, but rather contrary; for they were never call'd *marches* of Scotland, but the *marches* of England: whereas the ſtatute of 34, doth not ſpeak of the *marches* of England, but of the *marches* of Wales.

They ſaid farther, that the county of Worceſter did in no place or point touch upon Wales, and therefore that county could not be termed *marches*.

To the ſecond they produced three proofs; firſt, ſome words in the ſtatute of 32 H. VIII. where the ſtatute, providing for a form of trial for treaſon committed in Wales, and the *marches* thereof, doth uſe that word, which was in time after the ſtatute of 27; whereby they prove the uſe of the word continued.

The ſecond proof was out of two places of the ſtatute, whereupon we diſpute, where the word *marches* is uſed for the lordſhips marchers.

The

The third proof was the ſtyle and form of the commiſſion of *oyer* and *terminer* even to this day, which run to give power and authority to the preſident and council there, *infra principalitat. Walliae*, and *infra* the four counties by name, with this clauſe farther, *et marchias Walliae eiſdem comitatibus adjacent'*: whereby they infer two things ſtrongly, the one that the *marches* of Wales muſt needs be a diſtinct thing from the four counties; the other that the word *marches* was uſed for the lordſhips marchers long after both ſtatutes.

They ſaid farther, that otherwiſe the proceeding, which had been in the four new erected counties of Wales by the commiſſion of *oyer* and *terminer*, by force whereof many had been proceeded with both for life, and otherways, ſhould be called in queſtion, as *coram non judice*, inſomuch as they neither were part of the principality of Wales, nor part of the four ſhires; and therefore muſt be contained by the word *marches*, or not at all.

For the third head, they did inſiſt upon the ſtatute of 34, and upon the preamble of the ſame ſtatute.

The title being an act for certain ordinances in the King's Majeſty's dominion and principality of Wales; and the preamble being for the tender zeal and affection that the King bears to his ſubjects of Wales; and again, at the humble ſuit and petition of his ſubjects of Wales: whereby they infer that the ſtatute had no purpoſe to extend or intermeddle with any part of the King's dominions or ſubjects but only within Wales.

And for uſage and practice, they ſaid, it was nothing againſt an act of parliament.

And for the inſtructions, they preſſed to ſee the inſtructions immediately after the ſtatute made.

And for the certificate and opinions of Gerrard and Bromley, they ſaid they doubted not, but that if it were now referred to the attorney and ſolicitor, they would certify as they did.

And laſtly, they relied, as upon their principal ſtrength, upon the precedent of that, which was done of the exempting of Cheſhire from the late juriſdiction of the ſaid council; for they ſaid, that from 34 of H. VIII. until 11 of Queen Eliz. the court of the marches did uſurp juriſdiction upon that county, being likewiſe adjacent to Wales, as the other four are; but that in the eleventh year of Queen Elizabeth aforeſaid, the ſame being queſtioned at the ſuit of one Radforde, was referred to the lord Dyer, and three other judges, who by their certificate at large remaining of record in the chancery, did pronounce the ſaid ſhire to be exempted, and that in the concluſion of their certificate they give this reaſon, becauſe it was no part of the principality, or marches of Wales. By which reaſon, they ſay, it ſhould appear their opinion was, that the word *marches* could not extend to counties adjacent. This was the ſubſtance of their defence.

The reply of the King's Solicitor to the arguments of the two ſerjeants.

HAVING divided the ſubſtance of their arguments *(ut ſupra)* he did purſue the ſame diviſion in his reply, obſerving nevertheleſs both a great redundancy, and a great defect in that, which was ſpoken. For touching the uſe of the word *marches*, great labour had been taken, which was not denied: but touching the intent of the parliament, and the reaſons to demonſtrate the ſame, which were the life of the queſtion, little or nothing had been ſpoken.

And therefore as to the firſt head, that the word *marches* had been often applied to the lordſhips marchers, he ſaid it was the ſophiſm which is called *ſciomachia*, fighting with their ſhadows; and that the ſound of ſo many ſtatutes, ſo many printed book caſes, ſo many records, were *nomina magna*, but they did not preſs the queſtion; for we grant that the word *marches* hath ſignifications, ſometimes for the counties, ſometimes for the lordſhips marchers, like as Northampton and Warwick is ſometimes taken for the towns of Northampton and Warwick, and ſometimes for the counties of Northampton and Warwick. And

Dale and Sale are ſometimes taken for the villages or hamlets of Dale and Sale, and ſometimes taken for the pariſhes of Dale and Sale: and therefore that the moſt part of that they had ſaid, went not to the point.

To that anſwer, which was given to the example of the middle ſhires upon Scotland, it was ſaid, it was not *ad idem*; for we uſed it to prove that the word *marches* may and doth refer to whole counties; and ſo much it doth manifeſtly prove; neither can they deny it. But then they pinch upon the addition, becauſe the Engliſh counties adjacent upon Scotland are called the marches of England, and the Engliſh counties adjacent upon Wales are called the *marches* of Wales; which is but a difference in phraſe: for ſometimes limits and borders have their names of the inward country, and ſometimes of the outward country; for the diſtinction of *excluſivè* and *incluſivè* is a diſtinction both in time and place; as we ſee that that which we call this day fortnight, excluding the day, the French and the law-phraſe calls this day fifteen days, or *quindena*, including the day. And if they had been called the marches upon Wales, or the marches againſt Wales, then it had been clear and plain; and what difference between the banks of the ſea, and the banks againſt the ſea? So that he took this to be but a toy, or cavillation, for that phraſes of ſpeech are *ad placitum, et recipiunt caſum.*

As to the reaſon of the map, that the county of Worceſter doth no way touch upon Wales, it is true, and I do find when the lordſhips marchers were annexed, ſome were laid to every other of the three ſhires, but none to Worceſter. And no doubt but this emboldened Wynd to make the claim to Worceſter, which he durſt not have thought on for any of the other three. But it falls out well that that, which is the weakeſt in probability, is ſtrongeſt in proof; for there is a caſe ruled in that more than in the reſt. But the true reaſon is, that uſage muſt over-rule propriety of ſpeech; and therefore if all commiſſions, and inſtructions, and practices, have coupled theſe four ſhires, it is not the map that will ſever them.

To the ſecond head he gave this anſwer. Firſt he obſerved in general that they had not ſhewed one ſtatute, or one book-caſe, or one record (the commiſſions of *oyer* and *terminer* only excepted) wherein the word *marches* was uſed for lordſhips marchers ſince the ſtatute of 34. So that it is evident, that as they granted the nature of thoſe marches was deſtroyed and extinct by 27; ſo the name was diſcontinued ſoon after, and did but remain a very ſmall while, like the ſound of a bell, after it hath been rung; and as indeed it is uſual when names are altered, that the old name, which is expired, will continue for a ſmall time.

Secondly, he ſaid, that whereas they had made the compariſon, that our acceptation of the word was popular, and theirs was legal, becauſe it was extant in book-caſes, and ſtatutes, and records, they muſt needs confeſs that they are beaten from that hold: for the name ceaſed to be legal clearly by the law of 27, which made the alteration in the thing itſelf, whereof the name is but a ſhadow; and if the name did remain afterwards, then it was neither legal, nor ſo much as vulgar, but it was only by abuſe, and by a trope or *catachreſis*.

Thirdly, he ſhewed the impoſſibility how that ſignification ſhould continue, and be intended by the ſtatute of 34. For if it did, it muſt be in one of theſe two ſenſes, either that it was meant of the lordſhips marchers made part of Wales, or of the lordſhips marchers annexed to the four ſhires of England.

For the firſt of theſe, it is plainly impugned by the ſtatute itſelf: for the firſt clauſe of the ſtatute doth ſet forth that the principality and dominion of Wales ſhall conſiſt of twelve ſhires; wherein the four new-erected counties, which were formerly lordſhips marchers, and whatſoever elſe was lordſhips marchers annexed to the ancient counties of Wales, is comprehended; ſo that of neceſſity all that territory or border muſt be Wales: then followeth the clauſe *immediately*, whereupon we now differ (viz.) that there ſhall be and remain a preſident and council in the principality of Wales, and the marches of the ſame; ſo that the parliament could not forget ſo ſoon what they had ſaid in the clauſe next before: and therefore by the marches they meant ſomewhat elſe beſides that which was Wales. Then if they fly to the ſecond ſignification, and ſay

that it was meant by the lordſhips marchers annexed to the four Engliſh ſhires; that device is merely *nuper nata oratio*, a mere fiction and invention of wit, croſſed by the whole ſtream and current of practice; for if that were ſo, the juriſdiction of the council ſhould be over part of thoſe ſhires, and in part not; and then in the ſuits commenced againſt any of the inhabitants of the four ſhires, it ought to have been laid or ſhewed that they dwelt within the ancient lordſhips marchers, whereof there is no ſhadow that can be ſhewed.

Then he proceeded to the three particulars. And for the ſtatute of 32, for trial of treaſon, he ſaid it was neceſſary that the word *marches* ſhould be added to Wales, for which he gave this reaſon, that the ſtatute did not only extend to the trial of treaſons, which ſhould be committed after the ſtatute, but did alſo look back to treaſons committed before: and therefore this ſtatute being made but five years after the ſtatute of 27, that extinguiſhed the lordſhips marchers, and looking back, as was ſaid, was fit to be penned with words that might include the preterperfect tenſe, as well as the preſent tenſe; for if it had reſted only upon the word *Wales*, then a treaſon committed before the lordſhips marchers were made part of Wales, might have eſcaped the law.

To this alſo another anſwer was given, which was, that the word *marches* as uſed in that ſtatute, could not be referred to the four ſhires, becauſe of the words following, wherewith it is coupled (viz.) in Wales, and the marches of the ſame, where the King's writ runs not.

To the two places of the ſtatute of 34 itſelf, wherein the word *marches* is uſed for lordſhips marchers; if they be diligently marked, it is merely ſophiſtry to alledge them; for both of them do ſpeak by way of recital of the time paſt before the ſtatute of 27, as the words themſelves being read over will ſhew without any other enforcement; ſo that this is ſtill to uſe the almanack of the old year with the new.

To the commiſſions of *oyer* and *terminer*, which ſeemeth to be the beſt evidence they ſhew for the continuance of the name in that tropical or abuſed ſenſe, it might move ſomewhat, if this form of penning thoſe commiſſions had been begun ſince the ſtatute of 27. But we ſhew forth the commiſſion in 17 H. VIII. when the Princeſs Mary went down, running in the ſame manner *verbatim*, and in that time it was proper, and could not otherwiſe be. So that it appeareth that it was but merely a *fac ſimile*, and that notwithſtanding the caſe was altered, yet the clerk of the crown purſued the former precedent; hurt it did none, for the word *marches* is there ſuperfluous.

And whereas it was ſaid, that the words in thoſe commiſſions were effectual, becauſe elſe the proceeding in the four new-erected ſhires of Wales ſhould be *coram non judice*, that objection carrieth no colour at all; for it is plain, they have authority by the word *principality of Wales*, without adding the word *marches*; and that is proved by a number of places in the ſtatute of 34, where if the word *Wales* ſhould not comprehend thoſe ſhires, they ſhould be excluded in effect of the whole benefit of that ſtatute; for the word *marches* is never added in any of theſe places.

To the third head, touching the true intent of the ſtatute, he firſt noted how naked their proof was in that kind, which was the life of the queſtion, for all the reſt was but *in litera, et in cortice*.

He obſerved alſo that all the ſtrength of our proof, that concerned that point, they had paſſed over in ſilence, as belike not able to anſwer: for they had ſaid nothing to the firſt intentions of the erections of the court, whereupon the parliament built; nothing to the diverſity of penning, which was obſerved in the ſtatute of 34, leaving out the word *marches*, and reſting upon the word *Wales* alone; nothing to the reſiance, nothing to the denomination, nothing to the continual practice before the ſtatute and after, nothing to the King's inſtructions, *etc.*

As for that, that they gather out of the title and preamble, that the ſtatute was made for Wales, and for the weal and government of Wales, and at the petition of the ſubjects of Wales, it was little to the purpoſe; for no man will affirm on our part the four Engliſh ſhires were brought under the juriſdiction of that council, either firſt by the King, or after by the parliament, for their own ſakes,

being

being in parts no farther remote; but it was for congruity's ſake, and for the good of Wales, that that commixture was requiſite: and *turpis eſt pars, quae non congruit cum toto.* And therefore there was no reaſon, that the ſtatute ſhould be made at their petition, conſidering they were not *primi in intentione*, but came *ex conſequenti.*

And whereas they ſay that uſage is nothing againſt an act of parliament, it ſeems they do voluntarily miſtake, when they cannot anſwer; for we do not bring uſage to croſs an act of parliament, where it is clear, but to expound an act of parliament, where it is doubtful, and evermore *contemporanea interpretatio*, whether it be of ſtatute or Scripture, or author whatſoever, is of greateſt credit: for to come now, above ſixty years after, by ſubtilty of wit to expound a ſtatute otherwiſe than the ages immediately ſucceeding did conceive it, is *expoſitio contentioſa*, and not *naturalis.* And whereas they extenuate the opinion of the attorney and ſolicitor, it is not ſo eaſy to do: for firſt they were famous men, and one of them had his patrimony in the ſhires; ſecondly, it was of ſuch weight, as a decree of the council was grounded upon it; and thirdly, it was not unlike, but that they had conferred with the judges, as the attorney and ſolicitor do often uſe in like caſes.

Laſtly, for the exemption of Cheſhire he gave this anſwer. Firſt, that the certificate in the whole body of it, till within three or four of the laſt lines, doth rely wholly upon that reaſon, becauſe it was a county Palatine; and to ſpeak truth, it ſtood not with any great ſenſe or proportion, that that place, which was privileged and exempted from the juriſdiction of the courts of Weſtminſter, ſhould be meant by the parliament to be ſubjected to the juriſdiction of that council.

Secondly, he ſaid that thoſe reaſons, which we do much inſiſt upon for the four ſhires, hold not for Cheſhire; for we ſay it is fit the ſubject of Wales be not forced to ſue at Weſtminſter, but have his juſtice near hand; ſo may he have in Cheſhire, becauſe there is both a juſtice for common law and a chancery; we ſay it is convenient for the Prince, if it pleaſe the King to ſend him down, to have ſome juriſdiction civil as well as for the peace; ſo may he have in Cheſhire, as earl of Cheſter. And therefore thoſe grave men had great reaſon to conceive that the parliament did not intend to include Cheſhire.

And whereas they pinch upon the laſt words in the certificate, viz. that Cheſhire was no part of the dominion, nor of the marches, they muſt ſupply it with this ſenſe, not within the meaning of the ſtatute; for otherwiſe the judges could not have diſcerned of it: for they were not to try the fact, but to expound the ſtatute; and that they did upon thoſe reaſons, which were ſpecial to Cheſhire, and have no affinity with the four ſhires.

And therefore if it be well weighed, that certificate makes againſt them; for as *exceptio firmat legem in caſibus non exceptis*, ſo the excepting of that ſhire by itſelf doth fortify, that the reſt of the ſhires were included in the very point of difference.

After this he ſhewed a ſtatute in 18 Eliz. by which proviſion is made for the repair of a bridge called Chepſtow-bridge between Monmouth and Gloceſter, and the charge lay in part upon Gloceſterſhire; in which ſtatute there is a clauſe, that if the juſtices of peace do not their duty in levying of the money, they ſhall forfeit five pounds to be recovered by information before the council of the marches: whereby he inferred that the parliament would never have aſſigned the ſuit to that court, but that it conceived Gloceſterſhire to be within the juriſdiction thereof. And therefore he concluded that here is in the nature of a judgment by parliament, that the ſhires are within the juriſdiction.

The third and laſt argument of the King's Solicitor in the caſe of the marches, in reply to ſerjeant Harris.

THIS caſe groweth now to ſome ripeneſs, and I am glad we have put the other ſide into the right way; for in former arguments they laboured little upon the intent of the ſtatute of 34 H. VIII. and buſied themſelves in effect alto-

altogether about the force and uſe of the word *marches*: but now finding that *littera mortua non prodeſt*, they offer at the true ſtate of the queſtion, which is the intent; I am determined therefore to reply to them in their own order, *ut manifeſtum ſit* (as he ſaith) *me nihil aut ſubterfugere voluiſſe reticendo, aut obſcurare dicendo.*

All which hath been ſpoken on their part conſiſteth upon three proofs.

The firſt was by certain inferences to prove the intent of the ſtatute.

The ſecond was to prove the uſe of the word *marches* in their ſenſe long after both ſtatutes; both that of 27, which extincted the lordſhips marchers, and that of 34, whereupon our queſtion ariſeth.

The third was to prove an interruption of that practice and uſe of juriſdiction, upon which we mainly inſiſt, as the beſt expoſition of the ſtatute.

For the firſt of theſe, concerning the intention, they brought five reaſons.

The firſt was that this ſtatute of 34, was grounded upon a platform, or preparative of certain ordinances made by the King two years before, viz. 32; in which ordinances there is the very clauſe, whereupon we diſpute, viz. That there ſhould be and remain in the dominion and principality of Wales a preſident and a council: In which clauſe nevertheleſs the word *marches* is left out, whereby they collect that it came into the ſtatute of 34, but as a ſlip, without any farther reach or meaning.

The ſecond was, that the miſchief before the ſtatute, which the ſtatute means to remedy, was, that Wales was not governed according to ſimilitude or conformity with the laws of England. And therefore, that it was a croſs and perverſe conſtruction, when the ſtatute laboured to draw Wales to the laws of England, to conſtrue it, that it ſhould abridge the ancient ſubjects of England of their own laws.

The third was, that in a caſe of ſo great importance it is not like that if the ſtatute had meant to include the four ſhires, it would have carried it in a dark general word, as it were *noctanter*, but would have named the ſhires to be comprehended.

The fourth was, the more to fortify the third reaſon, they obſerved that the four ſhires are remembred and named in ſeveral places of the ſtatute, three in number; and therefore it is not like that they would have been forgotten in the principal place, if they had been meant.

The fifth and laſt was, that there is no clauſe of attendance, that the ſheriffs of the four ſhires ſhould attend the lord preſident and the council; wherein there was urged the example of the acts of parliament, which erected courts; as the court of augmentations, the court of wards, the court of ſurvey; in all which there are clauſes of attendance; whereupon they inferred that evermore, where a ſtatute gives a court juriſdiction, it ſtrengtheneth it with a clauſe of attendance; and therefore no ſuch clauſe being in this ſtatute, it is like there was no juriſdiction meant. Nay, farther they noted, that in this very ſtatute for the juſtices of Wales, there is a clauſe of attendance from the ſheriffs of Wales.

In anſwer to their firſt reaſon, they do very well, in my opinion, to conſider Mr. Attorney's buſineſs and mine, and therefore to find out for us evidence and proofs, which we have no time to ſearch; for certainly nothing can make more for us than theſe ordinances, which they produce: for the diverſity of penning of that clauſe in the ordinances, where the word *marches* is omitted, and that clauſe in the ſtatute where the word *marches* is added, is a clear and perfect direction what was meant by that word. The ordinances were made by force and in purſuance of authority given to the King by the ſtatute of 27; to what did the ſtatute extend? Only to Wales. And therefore the word *marches* in the ordinances is left out; but the ſtatute of 34 reſpected not only Wales, but the commixed government, and therefore the word *marches* was put in. They might have remembred that we built an argument upon the difference of penning of that ſtatute of 34 itſelf in the ſeveral clauſes of the ſame; for that in all other clauſes, which concern only Wales, the word *marches* is ever omitted; and in that clauſe alone that concerneth the juriſdiction of the preſident and council, it is inſerted. And this our argument is notably fortified by that they now ſhew of the

ordinances, where in the very self same clause touching the president and council, because the King had no authority to meddle but with Wales, the word *marches* is omitted. So that it is most plain that this word comes not in by chance or slip, but with judgment and purpose, as an effectual word: for, as it was formerly said, *opposita juxta se posita magis eluceſcunt*; and therefore I may likewise urge another place in the statute which is left out in the ordinance; for I find there is a clause that the town of Bewdley, which is confessed to be no lordships marcher, but to lie within the county of Worcester; yet because it was an exempted jurisdiction, is by the statute annexed unto the body of the said county. First, this shews that the statute of 34 is not confined to Wales, and the lordships marchers, but that it intermeddles with Worcestershire. Next, do you find any such clause in the ordinance of 32? No. Why? Because they were appropriate to Wales. So that in my opinion nothing could enforce our exposition better than the collating of the ordinance of 32 with the statute of 34.

In answer to the second reason, the course, that I see often taken in this cause, makes me think of the phrase of the Psalm, *starting aside like a broken bow:* so when they find their reasons broken, they start aside to things not in question. For now they speak, as if we went about to make the four shires Wales, or to take from them the benefit of the laws of England, or their being accounted amongst the ancient counties of England: doth any man say that those shires are not within the circuits of England, but subject to the justices of Wales? or that they should send but one knight to the parliament, as the shires of Wales do? or that they may not sue at Westminster, in chancery, or at common law, or the like? No man affirms any such things; we take nothing from them, only we give them a court of summary justice in certain causes at their own doors.

And this is *nova doctrina* to make such an opposition between law and equity, and between formal justice and summary justice. For there is no law under heaven which is not supplied with equity; for *summum jus, summa injuria*, or as, some have it, *summa lex, summa crux*. And therefore all nations have equity; but some have law and equity mixed in the same court, which is the worse; and some have it distinguished in several courts, which is the better. Look into any counties Palatine, which are small models of the great government of kingdoms, and you shall never find any, but had a chancery.

Lastly, it is strange that all other places do require courts of summary justice, and esteem them to be privileges and graces; and in this cause only they are thought to be servitudes and loss of birth-right. The universities have a court of summary justice, and yet I never heard that scholars complain their birth-right was taken from them. The stannaries have them, and you have lately affirmed the jurisdiction: and yet you have taken away no man's birth-right. The court at York, whosoever looks into it, was erected at the petition of the people, and yet the people did not mean to cast away their birth-right. The court of wards is mixed with discretion and equity; and yet I never heard that infants and innocents were deprived of their birth-right. London, which is the seat of the kingdom, hath a court of equity, and holdeth it for a grace and favour; how then cometh this case to be singular? And therefore these be new phrases and conceits proceeding of error or worse; and it makes me think that a few do make their own desires, the desires of the country, and that this court is desired by the greater number, though not by the greater stomachs.

In answer to the third reason, if men be conversant in the statutes of this kingdom, it will appear to be no new thing to carry great matters in general words without other particular expressing. Consider but of the statute of 26 H. VIII. which hath carried estates tails under the general words of estates of inheritance. Consider of the statute of 16 R. II. of *praemunire*, and see what great matters are thought to be carried under the word *alibi*. And therefore it is an ignorant assertion to say that the statute would have named the shires, if it had meant them.

Secondly, the statute had more reason to pass it over in general words, because it did not ordain a new matter, but referreth to usage: and though the statute speaks generally, yet usage speaks plainly and particularly, which is the strongest kind of utterance or expressing. *Quid verba audiam, cum facta videam.*

And

And thirdly, this argument of theirs may be ſtrongly retorted againſt them, for as they infer that the ſhires were not meant, becauſe they were not included by name; ſo we infer that they are meant, becauſe they are not excepted by name, as is uſual by way of proviſo in like caſes: and our inference hath far greater reaſon than theirs, becauſe at the time of the making of the ſtatute they were known to be under the juriſdiction: And therefore that ought to be moſt plainly expreſſed, which ſhould work a change, and not that, which ſhould continue things, as they were.

In anſwer to their fourth reaſon, it makes likewiſe plainly againſt them; for there be three places, where the ſhires be named, the one for the extincting of the cuſtom of Gavelkind; the ſecond for the aboliſhing of certain forms of aſſurance which were too light to carry inheritance and freehold; the third for the reſtraining of certain franchiſes to that ſtate they were in by a former ſtatute. In theſe three places the words of the ſtatute are, the lordſhips marchers annexed unto the counties of Hereford, Salop, *etc.*

Now mark, if the ſtatute conceived the word *marches* to ſignify lordſhips marchers, what needeth this long circumlocution? It had been eaſier to have ſaid, within the *marches*. But becauſe it was conceived that the word *marches* would have comprehended the whole counties, and the ſtatute meant but of the lordſhips marchers annexed; therefore they were enforced to uſe that *periphraſis*, or length of ſpeech.

In anſwer to the fifth reaſon, I give two ſeveral anſwers; the one, that the clauſe of attendance is ſupplied by the word *incidents*; for the clauſe of eſtabliſhment of the court hath that word, *with all incidents to the ſame as heretofore hath been uſed*: for execution is ever incident to juſtice or juriſdiction. The other becauſe it is a court, that ſtandeth not by the act of parliament alone, but by the King's inſtructions, whereto the act refers. Now no man will doubt but the King may ſupply the clauſe of attendance; for if the King grant forth a commiſſion of *oyer* and *terminer*, he may command what ſheriff he will to attend it; and therefore there is a plain diverſity between this caſe, and the caſes they vouch of the court of wards, ſurvey, and augmentations: for they were courts erected *de novo* by parliament, and had no manner of reference either to uſage or inſtructions; and therefore it was neceſſary that the whole frame of thoſe courts, and their authority both for judicature and execution, ſhould be deſcribed, and expreſſed by parliament. So was it of the authority of the juſtices of Wales in the ſtatute of 34 mentioned, becauſe there are many ordinances *de novo* concerning them; ſo that it was a new erection, and not a confirmation of them.

Thus have I, in confutation of their reaſons, greatly, as I conceive, confirmed our own, as it were with new matter; for moſt of that, they have ſaid, made for us. But as I am willing to clear your judgments, in taking away the objections; ſo I muſt farther pray in aid of your memory for thoſe things which we have ſaid, whereunto they have offered no manner of anſwer; for unto all our proofs which we made, touching the intent of the ſtatute, which they grant to be the ſpirit and life of this queſtion, they ſaid nothing: as not a word to this; That otherwiſe the word *marches* in the ſtatute ſhould be idle or ſuperfluous: not a word to this; That the ſtatute doth always omit the word *marches* in things that concern only Wales: not a word to this; That the ſtatute did not mean to innovate but to ratify, and therefore if the ſhires were in before, they are in ſtill: not a word to the reaſon of the commixed government, as that it was neceſſary for the reclaiming of Wales to have them conjoin'd with the ſhires; that it was neceſſary for commerce and contracts, and properly for the eaſe of the ſubjects of Wales againſt the inhabitants of the ſhires; that it was not probable that the parliament meant the Prince ſhould have no juriſdiction civil in that place, where he kept his houſe. To all theſe things, which we eſteem the weightieſt, there is *altum ſilentium*, after the manner of children that ſkip over, where they cannot ſpell.

Now to paſs from the intent to the word; firſt, I will examine the proofs they have brought that the word was uſed in their ſenſe after the ſtatute 27

and

and 34; then I will consider what is gained, if they should prove so much; and lastly, I will briefly state our own proofs, touching the use of the word.

For the first, it hath been said, that whereas I called the use of the word *marches* after the statute of 27, but a little chime at most of an old word, which soon after vanished, they will now ring us a peal of statutes to prove it; but if it be a peal, I am sure it is a peal of bells, and not a peal of shot: for it clatters, but it doth not strike: for of all that catalogue of statutes I find scarcely one, save those that were answered in my former argument; but we may with as good reason affirm in every of them the word *marches* to be meant of the counties marches, as they can of the lordships marchers: for to begin upwards:

The statute 39 Eliz. for the repair of Wilton-bridge no doubt doth mean the word *marches* for the counties; for the bridge itself is in Herefordshire, and the statute imposeth the charge of reparation upon Herefordshire by compulsory means, and permitteth benevolence to be taken in Wales, and the marches; who doubts, but this meant of the other three shires, which have far greater use of the bridge than the remote counties of Wales?

For the statute 5 Eliz. concerning perjury, it hath a proviso, that it shall not be prejudicial to the council of the marches for punishing of perjury; who can doubt, but that here *marches* is meant of the shires, considering the perjuries committed in them have been punished in that court as well as in Wales?

For 2 Ed. VI. and the clause therein for restraining tithes of marriage-portions in Wales and the marches, why should it not be meant of counties? For if any such customs had crept and incroached into the body of the shires out of the lordships marchers, no doubt the statute meant to restrain them as well there, as in the other places.

And so for the statute of 32 H. VIII. which ordains that the benefit of that statute for distress to be had by executors, should not extend to any lordship in Wales, or the marches of the same where *mises* are paid, because that imports a general release; what absurdity is there, if there the marches be meant for the whole shires? for if any such custom had spread so far, the reason of the statute is alike.

As for the statutes of 37 H. VIII. and 4 Ed. IV. for the making and appointing of the *custos rotulorum*, there the word *marches* must needs be taken for limits, according to the etymology and derivation: for the words refer not to Wales, but are thus, *within England and Wales, and other the King's dominions, marches and territories*, that is, *limits and territories*; so as I see no reason, but I may truly maintain my former assertion, that after the lordships marchers were extinct by the statute of 27, the name also of marches was discontinued, and rarely if ever used in that sense.

But if it should be granted that it was now and then used in that sense, it helps them little; for first it is clear that the legal use of it is gone, when the thing was extinct, for *nomen est rei nomen*; so it remains but *abusivè*, as if one should call *Guletta*, *Carthage*, because it was once *Carthage*; and next, if the word should have both senses, and that we admit an equivocation, yet we so overweigh them upon the intent, as the balance is soon cast.

Yet one thing I will note more, and that is, that there is a certain confusion of tongues on the other side, and that they cannot well tell themselves what they would have to be meant by the word *marches*; for one while they say it is meant for the lordships marchers *generally*, another while they say that it is meant for the inward marches on *Wales side only*; and now at last they are driven to a poor shift, that there should be left some *little lordship marcher* in the dark, as *casus omissus*, not annexed at all to any county; but if they would have the statute satisfied upon that only, I say no more to them, but *aquila non capit muscas.*

Now I will briefly remember unto you the state of our proofs of the word.

First, according to the laws of speech we prove it by the etymology or derivation, because *march* is the Saxon word for limit, and *marchio* is *comes limitaneus*; this is the opinion of Camden and others.

Next we prove the use of the word in the like case to be for counties, by the example of the marches of Scotland: for as it is prettily said in Walker's case by

Gawdy, if a caſe have no couſin, it is a ſign it is a baſtard, and not legitimate; therefore we have ſhewed you a couſin, or rather a brother, here within our own iſland of the like uſe of the word. And whereas a great matter was made that the now middle ſhires were never called the marches of Scotland, but the marches of England againſt Scotland, or upon Scotland; it was firſt anſwered that that made no difference; becauſe ſometimes the *marches* take their name of the inward country, and ſometimes of the out-country; ſo that it is but *incluſive* and *excluſive*: as for example, that which we call in vulgar ſpeech this day *fortnight*, excluding the day, that the law calls *quindena*, including the day; and ſo likewiſe, who will make a difference between the banks of the ſea, and the banks againſt the ſea, or upon the ſea? But now to remove all ſcruple, we ſhew them Littleton in his chapter *Of grand ſerjeanty*, where he ſaith, there is a tenure by cornage in the *marches* of Scotland: and we ſhew them likewiſe the ſtatute of 25 Edw. III. *Of labourers*, where they are alſo called the *marches of Scotland*.

Then we ſhew ſome number of bills exhibited to the council there before the ſtatute, where the plaintiffs have the addition of place confeſſed within the bodies of the ſhires, and no lordſhips marchers, and yet are laid to be in the *marches*.

Then we ſhew divers accounts of auditors in the Duchy from H. IV. downwards, where the indorſement is *in marchiis Walliae*, and the contents are poſſeſſions only of Hereford and Gloceſterſhire (for in Shropſhire and Worceſterſhire the Duchy hath no lands) and whereas they would put it off with a *cuique in ſua arte credendum*, they would believe them, if it were in matter of accounts; we do not alledge them as auditors, but as thoſe that ſpeak Engliſh to prove the common uſe of the word, *loquendum ut vulgus*.

We ſhew likewiſe an ancient record of a patent to Harbert in 15 E. IV. where Kilpeck is laid to be in *com. Hereford in marchiis Walliae*; and laſtly, we ſhew again the ſtatute of 27 E. III. where proviſion is made, that men ſhall labour in the ſummer where they dwell in the winter; and there is an exception of the people of the counties of Stafford and Lancaſhire, *etc.* and of the marches of Wales and Scotland; where it is moſt plain, that the marches of Wales are meant for counties, becauſe they are coupled both with Stafford and Lancaſhire, which are counties, and with the marches of Scotland, which are likewiſe counties; and as it is informed, the labourers of thoſe four ſhires do come forth of their ſhires, and are known by the name of Cokers to this day.

To this we add two things, which are worthy conſideration; the one, that there is no reaſon to put us to the proof of the uſe of this word *marches* ſixty years ago, conſidering that uſage ſpeaks for us; the other, that there ought not to be required of us to ſhew ſo frequent an uſe of the word *marches* of ancient time in our ſenſe, as they ſhewed in theirs, becauſe there was not the like occaſion: for when a lordſhip marcher was mentioned it was of neceſſity to lay it in the *marches*, becauſe they were out of all counties; but when land is mentioned in any of theſe counties, it is ſuperfluous to add, in the marches; ſo as there was no occaſion to uſe the word *marches*, but either for a more brief and compendious ſpeech to avoid the naming of the four ſhires, at it is in the ſtatute of 25 E. III. and in the indorſement of accounts; or to give a court cognizance and juriſdiction, as in the bills of complaint; or *ex abundanti*, as in the record of Kilpeck.

There reſteth the third main part, whereby they endeavour to weaken and extenuate the proofs which we offer touching practice and poſſeſſion, wherein they alledge five things.

Firſt, that Briſtol was in until 7 Eliz. and then exempted.

Secondly, that Cheſhire was in until 11 Eliz. and then went out.

Thirdly, they alledge certain words in the inſtructions to Cholmley vice-preſident in 11 Eliz. at which time the ſhires were firſt comprehended in the inſtructions by name, and in theſe words, *annexed by our commiſſion*: whereupon they would infer that they were not brought in the ſtatute, but only came in by inſtructions, and do imagine that when Cheſhire went out they came in.

Fourthly, they ſay that the intermeddling with thoſe four ſhires before the ſta-

tute was but an uſurpation, and toleration, rather than any lawful and ſettled juriſdiction; and it was compared to that, which is done by the judges in their circuits, who end many cauſes upon petitions.

Fifthly, they alledge Sir John Mullen's caſe, where it is ſaid *conſuetudo non praejudicat veritati.*

There was moved alſo, tho' it were not by the council, but from the judges themſelves, as an extenuation, or at leaſt an obſcuring of the proofs of the uſage and practice, in that we ſhew forth no inſtructions from 17 H. VIII. to 1 Mariae.

To theſe ſix points I will give anſwer, and, as I conceive, with ſatisfaction.

For Briſtol, I ſay it teacheth them the right way, if they can follow it; for Briſtol was not exempted by any opinion of law, but was left out of the inſtructions upon ſupplication made to the Queen.

For Cheſhire, we have anſwered it before, that the reaſon was, becauſe it was not probable that the ſtatute meant to make that ſhire ſubject to the juriſdiction of that council, conſidering it was not ſubject to the high courts at Weſtminſter, in regard it was a county Palatine. And whereas they ſaid, that ſo was Flintſhire too, it matcheth not, becauſe Flintſhire is named in the ſtatute for one of the twelve ſhires of Wales.

We ſhewed you likewiſe effectual differences between Cheſhire and theſe other ſhires: for that Cheſhire hath a chancery in itſelf, and over Cheſhire the Princes claim juriſdiction, as earl of Cheſter; to all which you reply nothing.

Therefore I will add this only, that Cheſhire went out *ſecundo flumine*, with the good-will of the ſtate; and this is ſought to be evicted *adverſo flumine*, croſs the ſtate; and as they have opinion of four judges for the excluding of Cheſhire, ſo we have the opinions of two great learned men, Gerrard and Bromley, for the including of Worceſter; whoſe opinions, conſidering it was but matter of opinion, and came not judicially in queſtion, are not inferior to any two of the other; but we ſay that there is no oppoſition or repugnancy between them, but both may ſtand.

For Cholmley's inſtructions, the words may well ſtand, *that thoſe ſhires are annexed by commiſſion*; for the King's commiſſion or inſtructions (for thoſe words are commonly confounded) muſt co-operate with the ſtatute, or elſe they cannot be annexed. But for that conceit that they ſhould come in but in 11, when Cheſhire went out, no man that is in his wits can be of that opinion, if he mark it: for we ſee that the town of Gloceſter, etc. is named in the inſtructions of 1 Mar. and no man, I am ſure, will think that Gloceſter town ſhould be in, and Gloceſter ſhire out.

For the conceit, that they had but *juriſdictionem precariam*, the precedents ſhew plainly the contrary; for they had coercion, and they did fine and impriſon, which the judges do not upon petitions; and beſides, they muſt remember that many of our precedents, which we did ſhew forth, were not of ſuits originally commenced there, but of ſuits remanded from hence out of the King's courts, as to their proper juriſdiction.

For Sir John Mullen's caſe, the rule is plain and ſound, that where the law appears contrary, uſage cannot controul law; which doth not at all infringe the rule of *optima legum interpres conſuetudo*; for uſage may expound law, though it cannot over-rule law.

But of the other ſide I could ſhew you many caſes, where ſtatutes have been expounded directly againſt their expreſs letter to uphold precedents and uſage, as 2, and 3 Phil. et Mar. upon the ſtatute of Weſtminſter that ordained that the judges *coram quibus formatum erit appellum* ſhall enquire of the damages, and yet the law ruled that it ſhall be enquired before the judges of *Niſi prius*. And the great reverence given to precedents appeareth in 39 H. VI. 3 E. IV. and a number of other books; and the difference is exceedingly well taken in Slade's caſe, Coke's Reports 4. that is, where the uſage runs but amongſt clerks, and where it is in the eye and notice of the judge; for there it ſhall be preſumed, ſaith the book, that if the law were otherwiſe than the uſage hath gone, that either the council or the parties would have excepted to it, or the judges *ex officio* would have diſcerned

cerned of it, and found it; and we have ready for you a calendar of judges more than ſit at this table, that have exerciſed juriſdiction over the ſhires in that county.

As for exception, touching the want of certain inſtructions, I could wiſh we had them; but the want of them, in my underſtanding, obſcureth the caſe little. For let me obſerve unto you, that we have three forms of inſtructions concerning theſe ſhires extant; the firſt names them not expreſly, but by reference it doth, viz. that they ſhall hear and determine, *etc.* within any the *places* or *counties* within any of their commiſſions; and we have one of the commiſſions, wherein they were named; ſo as upon the matter they are named. And of this form is the ancient inſtructions before the ſtatute 17 H. VIII. when the Princeſs Mary went down.

The ſecond form of inſtructions go farther, for they have the towns, and exempted places within the counties named, with *tanquam* as well within the city of Gloceſter, the liberties of the Duchy of Lancaſter, *etc.* as within any of the counties of any of their commiſſions; which clearly admits the counties to be in before. And of this form are the inſtructions 1 Mariae, and ſo long until 11 Eliz.

And the third form, which hath been continued ever ſince, hath the ſhires comprehended by name. Now it is not to be thought, but the inſtructions which are wanting, are according to one of theſe three forms which are extant. Take even your choice, for any of them will ſerve to prove that the practice there was ever authorized by the inſtructions here. And ſo upon the whole matter, I pray report to be made to his Majeſty, that the preſident and the council hath juriſdiction, according to his inſtructions, over the four ſhires, by the true conſtruction of the ſtatute of 34 H. VIII.

A DRAUGHT of an

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Againſt an uſurious ſhift of gain, in delivering of commodities inſtead of money.

WHEREAS it is an uſual practice, to the undoing and overthrowing many young gentlemen and others, that when men are in neceſſity, and deſire to borrow money, they are anſwered, that money cannot be had, but that they may have commodities ſold unto them upon credit, whereof they may make money as they can: in which courſe it ever comes to paſs, not only that ſuch commodities are bought at extreme high rates, and ſold again far under foot to a double loſs; but alſo that the party which is to borrow, is wrapt in bonds and counter-bonds; ſo that upon a little money which he receiveth, he is ſubject to penalties and ſuits of great value.

Be it therefore enacted, by the authority of this preſent parliament that if any man, after forty days from the end of this preſent ſeſſion of parliament to be accounted, ſhall ſell in groſs ſale any quantity of wares or commodities unto ſuch a one as is no retailer, chapman, or known broker of the ſame commodities, and knowing that it is bought to be ſold again, to help and furniſh any perſon, that tradeth not in the ſame commodity, with money, he ſhall be without all remedy by law, or cuſtom, or decree, or otherwiſe, to recover or demand any ſatisfaction for the ſaid wares or commodities, what aſſurance ſoever he ſhall have by bond, ſurety, pawn or promiſe of the party, or any other in his behalf. And that all bonds and aſſurances whatſoever, made for that purpoſe directly or indirectly, ſhall be utterly void.

And be it further enacted, by the authority aforeſaid, that every perſon, which ſhall after the time aforeſaid be uſed or employed as a broker, mean or procurer, for the taking up of ſuch commodities, ſhall forfeit for every ſuch offence the ſum of one hundred pounds, the ſame to be
and ſhall be farther puniſhed by ſix months impriſonment, without bail or mainpriſe, and by the pillory.

A PREPARATION TOWARD THE UNION of the LAWS OF ENGLAND and SCOTLAND.

YOUR Majeſty's deſire of proceeding towards the union of this whole iſland of Great Britain under one law, is (as far as I am capable to make any opinion of ſo great a cauſe) very agreeable to policy and juſtice. To policy, becauſe it is one of the beſt aſſurances (as human events can be aſſured) that there will be never any relapſe in any future ages to a ſeparation. To juſtice, becauſe *dulcis tractus pari jugo:* it is reaſonable that communication of privilege draw on communication of diſcipline and rule. This work being of greatneſs and difficulty, needeth not to embrace any greater compaſs of deſignment, than is neceſſary to your Majeſty's main end and intention. I conſider therefore, that it is a true and received diviſion of law into *jus publicum* and *privatum*, the one being the ſinews of property, and the other of government; for that which concerneth private intereſt of *meum* and *tuum*, in my ſimple opinion, it is not at this time to be meddled with; men love to hold their own as they have held, and the difference of this law carrieth no mark of ſeparation; for we ſee in any one kingdom, which is moſt at unity in itſelf, there is diverſity of cuſtoms for the guiding of property and private rights: *in veſte varietas ſit, ſciſſura non ſit.* All the labour is to be ſpent in the other part, though perhaps not in all the other part; for, it may be, your Majeſty, in your high wiſdom, will diſcern that even in that part there will not be requiſite a conformity in all points. And although ſuch conformity were to be wiſhed, yet perchance it will be ſcarcely poſſible in many points to paſs them for the preſent by aſſent of parliament. But becauſe we that ſerve your Majeſty in the ſervice of our ſkill and profeſſion, cannot judge what your Majeſty, upon reaſon of ſtate, will leave and take; therefore it is fit for us to give, as near as we can, a general information: wherein I, for my part, think good to hold myſelf to one of the parallels, I mean that of the Engliſh laws. For although I have read, and read with delight, the Scotiſh ſtatutes, and ſome other collection of their laws; with delight I ſay, partly to ſee their brevity, and propriety of ſpeech, and partly to ſee them come ſo near to our laws: yet I am unwilling to put my ſickle in another's harveſt, but to leave it to the lawyers of the Scotiſh nation; the rather, becauſe I imagine with myſelf that if a Scotiſh lawyer ſhould undertake, by reading of the Engliſh ſtatutes, or other our books of law, to ſet down poſitively in articles what the law of England were, he might oftentimes err; and the like errors, I make account, I might incur in theirs. And therefore, as I take it, the right way is, that the lawyers of either nation do ſet down in brief articles what the law is of their nation, and then after, a book of two columns, either having the two laws placed reſpectively, to be offered to your Majeſty, that your Majeſty may by a ready view ſee the diverſities, and ſo judge of the reduction, or leave it as it is.

Jus publicum I will divide, as I hold it fitteſt for the preſent purpoſe, into four parts. The firſt, concerning criminal cauſes, which with us are truly accounted *publici juris*, becauſe both the prejudice and the proſecution principally pertain to the crown and publick eſtate. The ſecond, concerning the cauſes of the church. The third, concerning magiſtrates, offices, and courts; wherein falleth the conſideration of your Majeſty's regal prerogative, whereof the reſt are

but ſtreams. And the fourth, concerning certain ſpecial politick laws, uſages, and conſtitutions, that do import the publick peace, ſtrength, and wealth of the kingdom. In which part I do comprehend not only conſtant ordinances of law, but likewiſe forms of adminiſtration of law, ſuch as are the commiſſions of the peace, the viſitations of the provinces by the judges of the circuits, and the like. For theſe in my opinion, for the purpoſe now in hand, deſerve a ſpecial obſervation, becauſe they being matters of that temporary nature, as they may be altered, as I ſuppoſe, in either kingdom, without parliament, as to your Majeſty's wiſdom may ſeem beſt; it may be the moſt profitable and ready part of this labour will conſiſt in the introducing of ſome uniformity in them.

To begin therefore with capital crimes, and firſt that of treaſon.

CASES OF TREASON.

WHERE a man doth compaſs or imagine the death of the King, if it appear by any overt act, it is treaſon.

Where a man doth compaſs or imagine the death of the King's wife, if it appear by any overt act, it is treaſon.

Where a man doth compaſs or imagine the death of the King's eldeſt ſon and heir, if it appear by any overt act, it is treaſon.

Where a man doth violate the King's wife, it is treaſon.

Where a man doth violate the King's eldeſt daughter unmarried, it is treaſon.

Where a man doth violate the wife of the King's eldeſt ſon and heir, it is treaſon.

Where a man doth levy war againſt the King and his realm, it is treaſon.

Where a man is adherent to the King's enemies, giving them aid and comfort, it is treaſon.

Where a man counterfeiteth the King's great ſeal, it is treaſon.

Where a man counterfeiteth the King's privy ſeal, it is treaſon.

Where a man counterfeiteth the King's privy ſignet, it is treaſon.

Where a man doth counterfeit the King's ſign manual, it is treaſon.

Where a man counterfeits the King's money, it is treaſon.

Where a man bringeth into the realm falſe money, counterfeited to the likeneſs of the coin of England, with intent to merchandiſe or make payment therewith, and knowing it to be falſe, it is treaſon.

Where a man counterfeiteth any foreign coin current in payment within this realm, it is treaſon.

Where a man doth bring in foreign money, being current within the realm, the ſame being falſe and counterfeit, with intent to utter it, and knowing the ſame to be falſe, it is treaſon.

Where a man doth clip, waſh, round, or file any of the King's money, or any foreign coin current by proclamation, for gain's ſake, it is treaſon.

Where a man doth any ways impair, diminiſh, falſify, ſcale, or lighten the King's money, or any foreign moneys current by proclamation, it is treaſon.

Where a man killeth the Chancellor, being in his place, and doing his office, it is treaſon.

Where a man killeth the Treaſurer, being in his place, and doing his office, it is treaſon.

Where a man killeth the King's Juſtice in eyre, being in his place, and doing his office, it is treaſon.

Where a man killeth the King's Juſtice of aſſiſe, being in his place, and doing his office, it is treaſon.

Where a man killeth the King's Juſtice of *Oyer* and *Terminer*, being in his place, and doing his office, it is treaſon.

Where a man doth perſuade or withdraw any of the King's ſubjects from his obedience, or from the religion by his Majeſty eſtabliſhed, with intent to withdraw him from the King's obedience, it is treaſon.

Where a man is abſolved, reconciled, or withdrawn from his obedience to the King, or promiſeth his obedience to any foreign power, it is treaſon.

Where any Jeſuit, or other prieſt ordained ſince the firſt year of the reign of

of Queen Elizabeth, ſhall come into, or remain in any part of this realm, it is treaſon.

Where any perſon being brought up in a college of Jeſuits, or ſeminary, ſhall not return within ſix months after proclamation made, and within two days after his return ſubmit himſelf to take the oath of ſupremacy, if otherwiſe he do return, or be within the realm, it is treaſon.

Where a man doth affirm or maintain any authority of juriſdiction ſpiritual, or doth put in ure or execute any thing for the advancement or ſetting forth thereof, ſuch offence the third time committed, is treaſon.

Where a man refuſeth to take the oath of ſupremacy, being tendred by the biſhop of the dioceſe, if he be an eccleſiaſtical perſon; or by commiſſion out of the chancery, if he be a temporal perſon; ſuch offence, the ſecond time, is treaſon.

Where a man committed for treaſon, doth voluntarily break priſon, it is treaſon.

Where a jailor doth voluntarily permi ta man committed for treaſon to eſcape, it is treaſon.

Where a man procureth or conſenteth to a treaſon, it is treaſon.

Where a man relieveth or comforteth a traitor, knowing it, it is treaſon.

The puniſhment, trial, and proceedings in caſes of treaſon.

In treaſon, the corporal puniſhment is by drawing on a hurdle from the place of the priſon to the place of execution, and by hanging and being cut down alive, bowelling, and quartering: and in women by burning.

In treaſon, there enſueth a corruption of blood in the line aſcending and deſcending.

In treaſon, lands and goods are forfeited, and inheritances, as well entailed as fee ſimple, and the profits of eſtates for life.

In treaſon, the eſcheats go to the King, and not to the lord of the fee.

In treaſon, the lands forfeited ſhall be in the King's actual poſſeſſion without office.

In treaſon there be no acceſſaries, but all are principals.

In treaſon, no benefit of clergy, or ſanctuary, or peremptory challenge.

In treaſon, if the party ſtand mute, yet nevertheleſs judgment and attainder ſhall proceed all one as upon verdict.

In treaſon, bail is not permitted.

In treaſon, no counſel is to be allowed to the party.

In treaſon, no witneſs ſhall be received upon oath for the party's juſtification.

In treaſon, if the fact be committed beyond the ſeas, yet it may be tried in any county where the King will award his commiſſion.

In treaſon, if the party be *non ſanae memoriae*, yet if he had formerly confeſſed it before the King's council, and that it be certified that he was of good memory at the time of his examination and confeſſion, the court may proceed to judgment without calling or arraigning the party.

In treaſon, the death of the party before conviction diſchargeth all proceedings and forfeitures.

In treaſon, if the party be once acquit, he ſhall not be brought in queſtion again for the ſame fact.

In treaſon, no new caſe not expreſſed in the ſtatute of 25 Ed. III. nor made treaſon by any ſpecial ſtatute ſince, ought to be judged treaſon, without conſulting with the parliament.

In treaſon, there can be no proſecution but at the King's ſuit, and the King's pardon diſchargeth.

In treaſon, the King cannot grant over to any ſubject power and authority to pardon it.

In treaſon, a trial of a peer of the kingdom is to be by ſpecial commiſſion before the Lord High Steward, and thoſe that paſs upon him to be none but peers: and the proceeding is with great ſolemnity, the Lord Steward ſitting under a cloth

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of eſtate with a white rod of juſtice in his hand: and the peers may confer together, but are not any ways ſhut up; and are demanded by the Lord Steward their voices one by one, and the plurality of voices carrieth it. In treaſon, it hath been an ancient uſe and favour from the Kings of this realm to pardon the execution of hanging, drawing, and quartering; and to make warrant for their beheading.

The proceeding in caſe of treaſon with a common ſubject is in the King's bench, or by commiſſion of *Oyer* and *Terminer*.

MISPRISION OF TREASON.

Caſes of miſpriſion of treaſon.

WHERE a man concealeth high treaſon only, without any comforting or abetting, it is miſpriſion of treaſon.

Where a man counterfeiteth any foreign coin of gold or ſilver not current in the realm, it is miſpriſion of treaſon.

The puniſhment, trial, and proceeding in caſes of miſpriſion of treaſon.

The puniſhment of miſpriſion of treaſon is by perpetual impriſonment, loſs of the iſſues of their lands during life, and loſs of goods and chattels.

The proceeding and trial is, as in caſes of treaſon.

In miſpriſion of treaſon bail is not admitted.

PETIT TREASON.

Caſes of petit treaſon.

WHERE the ſervant killeth the maſter, it is petit treaſon.

Where the wife killeth her huſband, it is petit treaſon.

Where a ſpiritual man killeth his prelate, to whom he is ſubordinate, and oweth faith and obedience, it is petit treaſon.

Where the ſon killeth the father or mother, it hath been queſtioned whether it be petit treaſon, and the late experience and opinion ſeemeth to weigh to the contrary, though againſt law and reaſon in my judgment.

The puniſhment, trial, and proceeding in caſes of petit treaſon.

In petit treaſon, the corporal puniſhment is by drawing on an hurdle, and hanging, and in a woman burning.

In petit treaſon, the forfeiture is the ſame with the caſe of felony.

In petit treaſon, all acceſſaries are but in caſe of felony.

FELONY.

Caſes of felony.

WHERE a man committeth murder, that is, homicide of prepenſed malice, it is felony.

Where a man committeth manſlaughter, that is, homicide of ſudden heat, and not of malice prepenſed, it is felony.

Where a man committeth burglary, that is, breaking of an houſe with an intent to commit felony, it is felony.

Where a man rideth armed, with a felonious intent, it is felony.

Where a man doth maliciouſly and felonioufly burn a houſe, it is felony.

Where a man doth maliciouſly and felonioufly burn corn upon the ground, or in ſtacks, it is felony.

Where a man doth maliciouſly cut out another's tongue, or put out his eyes, it is felony.

Where a man robbeth or ſtealeth, that is, taketh away another man's goods, above the value of twelve pence, out of his poſſeſſion, with an intent to conceal it, it is felony.

Where a man imbezleth or withdraweth any the King's records at Weſtminſter, whereby any judgment is reverſed, it is felony.

Where a man that hath cuſtody of the King's armour, munition, or other habiliments of war, doth maliciouſly convey away the ſame, to the value of twenty ſhillings, it is felony.

Where a ſervant hath goods of his maſter's delivered unto him, and goeth away with them, it is felony.

Where a man conjures, or invocates wicked ſpirits, it is felony.

Where a man doth uſe or practiſe any manner of witchcraft, whereby any perſon ſhall be killed, waſted, or lamed in his body, it is felony.

Where a man practiſeth any witchcraft, to diſcover treaſure hid, or to diſcover ſtolen goods, or to provoke unlawful love, or to impair or hurt any man's cattle or goods, the ſecond time, having been once before convicted of like offence, it is felony.

Where a man uſeth the craft of multiplication of gold, or ſilver, it is felony.

Where a man committeth rape, it is felony.

Where a man taketh away a woman againſt her will, not claiming her as his ward or bondwoman, it is felony.

Where any perſon marrieth again, her or his former huſband or wife being alive, it is felony.

Where a man committeth buggery with man or beaſt, it is felony.

Where any perſons, above the number of twelve, ſhall aſſemble themſelves with intent to put down incloſures, or bring down prices of victuals, *etc.* and do not depart after proclamation, it is felony.

Where a man ſhall uſe any words to encourage or draw any people together, *ut ſupra*, and they do aſſemble accordingly, and do not depart after proclamation, it is felony.

Where a man being the King's ſworn ſervant, conſpireth to murder any lord of the realm, or any of the privy council, it is felony.

Where a ſoldier hath taken any parcel of the King's wages, and departeth without licence, it is felony.

Where a man receiveth a ſeminary prieſt, knowing him to be ſuch a prieſt, it is felony.

Where a recuſant, which is a ſeducer, and perſuader, and inciter of the King's ſubjects againſt the King's authority in eccleſiaſtical cauſes, or a perſuader of conventicles, *etc.* ſhall refuſe to abjure the realm, it is felony.

Where vagabonds be found in the realm, calling themſelves Egyptians, it is felony.

Where a purveyor taketh without warrant, or otherwiſe doth offend againſt certain ſpecial laws, it is felony.

Where a man hunteth in any foreſt, park, or warren, by night or by day, with vizards or other diſguiſements, and is examined thereof and concealeth his fact, it is felony.

Where a man ſtealeth certain kinds of hawks, it is felony.

Where a man committeth forgery the ſecond time, having been once before convicted, it is felony.

Where a man tranſporteth rams or other ſheep out of the King's dominions, the ſecond time, it is felony.

Where a man being impriſoned for felony, breaks priſon, it is felony.

Where a man procureth or conſenteth to a felony to be committed, it is felony, as to make him acceſſary before the fact.

Where a man receiveth or relieveth a felon, knowing thereof, it is felony, as to make him acceſſary after the fact.

Where a woman, by the conſtraint of her huſband, in his preſence, joineth with him in committing of felony, it is not felony, neither as principal, nor as acceſſary.

The puniſhment, trial, and proceeding in caſes of felony.

In felony, the corporal puniſhment is by hanging, and it is doubtful whether the King may turn it into beheading in the caſe of a Peer, or other perſon of dig-

dignity, becauſe in treaſon the ſtriking off the head is part of the judgment, and ſo the King pardoneth the reſt: but in felony, it is no part of the judgment, and the King cannot alter the execution of law; yet precedents have been both ways.

In felony, there followeth corruption of blood, except it be in caſes made felony by ſpecial ſtatutes, with a proviſo that there ſhall be no corruption of blood.

In felony, lands in fee ſimple, and goods are forfeited, but not lands intailed, and the profits of eſtates for life are likewiſe forfeited: And by ſome cuſtoms lands in fee ſimple are not forfeited;

The father to the bough, ſon to the plough;

as in Gavelkind in Kent, and other places.

In felony, the eſcheats go to the lord of the fee, and not to the King, except he be lord: But the profits of eſtates for lives, or in tail during the life of tenant in tail, go to the King; and the King hath likewiſe, in fee ſimple lands holden of common lords, *annum, diem, et vaſtum.*

In felony, the lands are not in the King before office, nor in the lord before entry or recovery in writ of eſcheat, or death of the party attainted.

In felony, there can be no proceeding with the acceſſary before there be a proceeding with the principal; which principal if he die, or plead his pardon, or have his clergy before attainder, the acceſſaries can never be dealt with.

In felony, if the party ſtand mute, and will not put himſelf upon his trial, or challenge peremptorily above the number that the law allows, he ſhall have judgment not of hanging, but of penance of preſſing to death; but then he ſaves his lands, and forfeits only his goods.

In felony, at the common law, the benefit of clergy or ſanctuary was allowed; but now by ſtatutes it is taken away in moſt caſes.

In felony, bail may be admitted where the fact is not notorious, and the perſon not of evil fame.

In felony, no counſel is to be allowed to the party, no more than in treaſon.

In felony, no witneſs ſhall be received upon oath for the party's juſtification, no more than in treaſon.

In felony, if the fact be committed beyond the ſeas, or upon the ſeas, *ſuper altum mare*, there is no trial at all in the one caſe, nor by courſe of jury in the other caſe, but by the juriſdiction of the Admiralty.

In felony, if the party be *non ſanæ memoriae*, although it be after the fact, he cannot be tried nor adjudged, except it be in courſe of outlawry, and that is alſo erroneous.

In felony, the death of the party before conviction diſchargeth all proceedings and forfeitures.

In felony, if the party be once acquit, or in peril of judgment of life lawfully, he ſhall never be brought in queſtion again for the ſame fact.

In felony, the proſecution may be either at the King's ſuit, by way of indictment, or at the party's ſuit, by way of appeal; and if it be by way of appeal, the defendant ſhall have his counſel, and produce witneſſes upon oath, as in civil cauſes.

In felony, the King may grant *hault juſtice* to a ſubject, with the regality of power to pardon it.

In felony, the trial of Peers is all one as in caſe of treaſon.

In felony, the proceedings are in the King's bench, or before Commiſſioners of *Oyer* and *Terminer*, or of gaol delivery, and in ſome caſes before juſtices of peace.

Caſes of Felonia de ſe, *with the puniſhment, trial, and proceeding therein.*

In the civil law, and other laws, they make a difference of caſes of *felonia de ſe*; for where a man is called in queſtion upon any capital crime, and killeth himſelf to prevent the law, they give the ſame judgment in all points of forfeiture, as if they had been attainted in their life-time: And on the other ſide, where a man killeth himſelf upon impatience of ſickneſs, or the like, they do not puniſh it at all: but the law of England taketh it all in one degree, and puniſheth

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it only with loſs of goods to be forfeited to the King, who generally granteth them to his Almoner, where they be not formerly granted unto ſpecial liberties.

OFFENCES of PRAEMUNIRE.

Caſes of Praemunire.

WHERE a man purchaſeth or accepteth any proviſion, that is, collation of any ſpiritual benefice or living, from the ſee of Rome, it is caſe of praemunire.

Where a man ſhall purchaſe any proceſs to draw any people of the King's allegiance out of the realm, in plea, whereof the cognizance pertains to the King's court, and cometh not in perſon to anſwer his contempt in that behalf before the King and his council, or in his chancery, it is caſe of praemunire.

Where a man doth ſue in any court which is not the King's court, to defeat or impeach any judgment given in the King's court, and doth not appear to anſwer his contempt, it is caſe of praemunire.

Where a man doth purchaſe or purſue in the court of Rome, or elſewhere, any proceſs, ſentence of excommunication, bull, inſtrument, or other thing which touches the King in his regality, or his realm in prejudice, it is caſe of praemunire.

Where a man doth affirm or maintain any foreign authority of juriſdiction ſpiritual, or doth put in ure or execute any thing for the advancement or ſetting forth thereof; ſuch offence, the ſecond time committed, is caſe of praemunire.

Where a man refuſeth to take the oath of ſupremacy, being tendered by the biſhop of the dioceſe, if he be an eccleſiaſtical perſon; or by commiſſion out of the chancery, if he be a temporal perſon, it is caſe of praemunire.

Where the dean and chapter of any church, upon the *Congé d'eſſire* of an archbiſhop or biſhop, doth refuſe to elect any ſuch archbiſhop or biſhop as is nominated unto them in the King's letters miſſive, it is caſe of praemunire.

Where a man doth contribute or give relief unto any Jeſuit or ſeminary prieſts, or to any college of Jeſuits or ſeminary prieſts, or to any perſon brought up therein, and called home, and not returning, it is caſe of praemunire.

Where a man is broker of an uſurious contract above ten in the hundred, it is caſe of praemunire.

The puniſhment, trial, and proceedings in caſes of praemunire.

The puniſhment is by impriſonment during life, forfeiture of goods, forfeiture of lands in fee ſimple, and forfeiture of the profits of lands intailed, or for life.

The trial and proceeding is as in caſes of miſpriſion of treaſon; and the trial is by peers, where a peer of the realm is the offender.

OFFENCES of ABJURATION and EXILE.

Caſes of abjuration and exile, and the proceedings therein.

WHERE a man committeth any felony, for the which at this day he may have privilege of ſanctuary, and taketh ſanctuary, and confeſſeth the felony before the coroner, he ſhall abjure the liberty of the realm, and chuſe his ſanctuary; and if he commit any new offence, or leave his ſanctuary, he ſhall loſe the privilege thereof, and ſuffer as if he had not taken ſanctuary.

Where a man not coming to the church, and, being a popiſh recuſant, doth perſuade any the King's ſubjects to impugn his Majeſty's authority in cauſes eccleſiaſtical, or ſhall perſuade any ſubject from coming to church, or receiving the communion, or perſuade any ſubject to come to any unlawful conventicles, or ſhall be preſent at any ſuch unlawful conventicles, and ſhall not after conform himſelf within a time, and make his ſubmiſſion, he ſhall abjure the realm, and forfeit his goods and lands during life; and if he depart not within the time prefixed, or return, he ſhall be in the degree of a felon.

Where a man being a popiſh recuſant, and not having lands to the value of twenty

twenty marks *per annum*, nor goods to the value of 40 l. ſhall not repair to his dwelling, or place where he was born, and there confine himſelf within the compaſs of five miles, he ſhall abjure the realm; and if he return, he ſhall be in the degree of a felon.

Where a man kills the King's deer in chaſes or foreſts, and can find no ſureties after a year's impriſonment, he ſhall abjure the realm.

Where a man is a treſpaſſer in parks, or in ponds of fiſh, and after three years impriſonment cannot find ſureties, he ſhall abjure the realm.

Where a man is a raviſher of any child within age, whoſe marriage belongs to any perſon, and marrieth the ſaid child after years of conſent, and is not able to ſatisfy for the marriage, he ſhall abjure the realm.

OFFENCE OF HERESY.

Caſes of hereſy, and the trial and proceeding therein.

THE declaration of hereſy, and likewiſe the proceeding and judgment upon hereticks, is by the common laws of this realm referred to the juriſdiction eccleſiaſtical, and the ſecular arm is reached unto them by the common laws, and not by any ſtatute, for the execution of them by the King's writ *de haeretico comburendo.*

Of the KING's PREROGATIVE.

The King's prerogative in parliament.

THE King hath an abſolute negative voice to all bills that paſs the parliament, ſo as without his royal aſſent they have a mere nullity, and not ſo much as *auctoritas praeſcripta* or *ſenatus conſulta* had, notwithſtanding the interceſſion of tribunes.

The King may ſummon parliaments, diſſolve them, prorogue them, and adjourn them at his pleaſure.

The King may add voices in the parliament at his pleaſure, for he may give privilege to borough towns as many as he will, and may likewiſe call and create barons at his pleaſure.

No man can ſit in parliament except he take the oath of allegiance.

The King's prerogative in matters of war and peace.

The King hath power to declare and proclaim war, and to make and conclude peace and truce at his pleaſure.

The King hath power to make leagues and confederacies with foreign ſtates, more ſtrait and leſs ſtrait, and to revoke and diſannul them at his pleaſure.

The King hath power to command the bodies of his ſubjects for the ſervice of his wars, and to muſter, train, and levy men, and to tranſport them by ſea or land at his pleaſure.

The King hath power in time of war to execute martial law, and to appoint all officers of war at his pleaſure.

The King hath power to grant his letters of mart and repriſal for remedy to his ſubjects upon foreign wrongs, at his pleaſure.

The King hath power to declare laws by his letters patents for the government of any place conquered by his arms, at his pleaſure.

The King may give knighthood, and thereby enable any ſubject to perform knight's ſervice, at his pleaſure.

The King's prerogative in matters of moneys.

The King may alter his ſtandard in baſeneſs or fineneſs of his coin at his pleaſure.

The King may alter his ſtamp in the form at his pleaſure.

The King may alter the valuations of his coin, and raiſe and fall moneys at his pleaſure.

The King by his proclamation may make moneys of his own current, or not current, at his pleaſure.

The King may take or refuſe the ſubjects bullion, and coin more or leſs money.

The King by his proclamation may make foreign money current, or not current.

The King's prerogative in matters of trade and traffick.

The King may conſtrain the perſon of any of his ſubjects not to go out of the realm at all.

The King may reſtrain any of his ſubjects to go out of the realm into any ſpecial part foreign.

The King may forbid the exportation of any commodities out of the realm.

The King may forbid the importation of any commodities into the realm.

The King may ſet a reaſonable impoſt upon any foreign wares that come into the realm, and ſo of native wares that go out of the realm.

The King's prerogative in the perſons of his ſubjects.

The King may create any corporation or body politick, and enable them to purchaſe, and grant, and to ſue, and be ſued; and that with ſuch reſtrictions and modifications as he pleaſes.

The King may denizen and enable any foreigner for him and his deſcendants after the charter, though he cannot naturalize, nor enable him to make pedigree from anceſtors paramount.

The King may enable any attainted perſon (by his charter of pardon) to purchaſe, and to purge his blood for the time to come, though he cannot reſtore his blood for the time paſt.

The King may enable any dead perſons in the law, as men profeſſed in religion, to take and purchaſe to the King's benefit.

A twofold power of the Law.

1. A Direction: In this reſpect the King is underneath the law, becauſe his acts are guided thereby.

2. Correction: In this reſpect the King is above the law; for it may not correct him for any offence.

A twofold power in the King.

1. His abſolute power, whereby he may levy forces againſt any nation.

2. His limited power, which is declared and expreſſed in the laws what he may do.

AN

EXPLANATION

What manner of Perſons thoſe ſhould be,

That are to execute the Power or Ordinance of the

KING'S PREROGATIVE.

1. THAT abſolute prerogative, according to the King's pleaſure, revealed by his laws, may be exerciſed and executed by any ſubject, to whom power may be given by the King, in any place of judgment or commiſſion, which the King by his law hath ordained: in which the judge ſubordinate cannot wrong the people, the law laying down a meaſure by which every judge ſhould govern and execute; againſt which law if any judge proceed, he is by the law queſtionable, and puniſhable for his tranſgreſſion.

In this nature are all the judges and commiſſioners of the land, no otherwiſe than in their courts, in which the King in perſon is ſuppoſed to ſit, who cannot make that treſpaſs, felony, or treaſon, which the law hath not made ſo to be, neither can puniſh the guilty by other puniſhment than the laws have appointed.

This prerogative or power as it is over all the ſubjects, ſo being known by the ſubjects, they are without excuſe if they offend, and ſuffer no wrong if they be juſtly puniſhed; and by this prerogative the King governeth all ſorts of people according unto known will.

2. The abſolute prerogative, which is in Kings according to their private will and judgment, cannot be executed by any ſubject; neither is it poſſible to give ſuch power by commiſſion; or fit to ſubject the people to the ſame; for the King, in that he is the ſubſtitute of God immediately, the father of his people, and head of the commonwealth, hath, by participation with God, and with his ſubjects, a diſcretion, judgment, and feeling love towards thoſe, over whom he reigneth, only proper to himſelf, or to his place and perſon; who, ſeeing he cannot in any others infuſe his wiſdom, power, or gifts, which God, in reſpect of his place and charge, hath enabled him withal, can neither ſubordinate any other judge to govern by that knowledge, which the King can no otherwiſe, than by his known will, participate unto him: and if any ſuch ſubordinate judge ſhall obtain commiſſion according to the diſcretion of ſuch judge to govern the people, that judge is bound to think that to be his ſoundeſt diſcretion, which the law (in which is the King's known will) ſheweth unto him to be that juſtice which he ought to adminiſter; otherwiſe he might ſeem to eſteem himſelf above the King's law, who will not govern by it, or to have a power derived from other than from the King, which in the kingdom will adminiſter juſtice contrary unto the juſtice of the land: neither can ſuch a judge or commiſſioner under the name of the King's authority ſhroud his own high action, ſeeing the conſcience and diſcretion of every man is particular and private to himſelf, ſo as the diſcretion of the judge cannot be properly or poſſibly the diſcretion or the conſcience of the King; and if not his diſcretion, neither the judgment that is ruled by another man's only.

Therefore it may ſeem they rather deſire to be Kings, than to rule the people under the King, which will not adminiſter juſtice by law, but by their own will.

3. This

3. This adminiſtration in a ſubject is derogative to the King's prerogative; for he adminiſtreth juſtice out of a private direction, being not capable of a general direction how to uſe the King's ſubjects at pleaſure, in cauſes of particular reſpect; which if no other than the King himſelf can do, how can it be ſo that any man ſhould deſire that which is unfit and impoſſible, but that it muſt proceed out of ſome exorbitant affection? the rather, ſeeing ſuch places be full of trouble, and altogether unneceſſary, no man will ſeek to thruſt himſelf into them but for hopes of gain. Then is not any prerogative oppugned, but maintained, though it be deſired, that every ſubordinate magiſtrate may not be made ſupreme, whereby he may ſeize upon the hearts of the people, take from the King the reſpect due unto him only, or judge the people otherwiſe than the King doth himſelf.

4. And although the Prince be not bound to render any account to the law, which in perſon he adminiſtreth himſelf, yet every ſubordinate judge muſt render an account to the King, by his laws, how he hath adminiſtred juſtice in his place where he is ſet. But if he hath power to rule by private direction, for which there is no law, how can he be queſtioned by a law, if in his private cenſure he offends?

5. Therefore, it ſeemeth, that in giving ſuch authority, the King ordaineth not ſubordinate magiſtrates, but abſolute Kings: and what doth the King leave to himſelf, who giveth ſo much to others, as he hath himſelf? Neither is there a greater bond to tie the ſubject to his Prince in particular, than when he ſhall have recourſe unto him, in his perſon, or in his power, for relief of the wrongs which from private men be offered; or for reformation of the oppreſſions which any ſubordinate magiſtrate ſhall impoſe upon the people. There can be no offence in the judge, who hath power to execute according to his diſcretion, when the diſcretion of any judge ſhall be thought fit to be limited, and therefore there can be therein no reformation; whereby the King in this uſeth no prerogative to gain his ſubjects right; then the ſubject is bound to ſuffer helpleſs wrong; and the diſcontent of the people is caſt upon the King; the laws being neglected, which with their equity in all other cauſes and judgments (ſaving this) interpoſe themſelves and yield remedy.

6. And to conclude, cuſtom cannot confirm that which is any ways unreaſonable of itſelf.

Wiſdom will not allow that, which is many ways dangerous, and no ways profitable.

Juſtice will not approve that government, where it cannot be but wrong muſt be committed.

Neither can there be any rule by which to try it, nor means of reformation of it.

7. Therefore, whoſoever deſireth government, muſt ſeek ſuch as he is capable of, not ſuch as ſeemeth to himſelf moſt eaſy to execute; for it is apparent, that it is eaſy to him that knoweth not law nor juſtice, to rule as he liſteth, his will never wanting a power to itſelf: But it is ſafe and blameleſs, both for the judge and people, and honour to the King, that judges be appointed who know the law, and that they be limited to govern according to the law.

THE OFFICE of CONSTABLES.

ORIGINAL and USE of COURTS LEET, SHERIFF'S TURN, etc.

WITH

The Anſwers to the Queſtions propounded by Sir Alexander Hay, Knt. touching the Office of Conſtables. A. D. 1608.

1. Queſt. *WHAT is the original of conſtables?*

Anſw. Of the original of the authority of conſtables it may be ſaid, *caput inter nubila condit*; for the authority was granted upon the ancient laws and cuſtoms of this kingdom practiſed long before the Conqueſt, and intended and inſtituted for the conſervation of the peace, and repreſſing of all manner of diſturbance and hurt of the people, and that as well by way of prevention as puniſhment; but yet ſo, as they have no judicial power, to hear and determine any cauſe, but only a miniſterial power, as in anſwer to the ſeventh article is demonſtrated.

As for the office of the high or head conſtable, the original of that is yet more obſcure; for though the high conſtable's authority hath the more ample circuit, he being over the hundred, and the petty-conſtable, over the village; yet I do not find that the petty-conſtable is ſubordinate to the high-conſtable, or to be ordered or commanded by him; and therefore, I doubt, the high-conſtable was not *ab origine*; but that when the buſineſs of the county encreaſed, the authority of the juſtices of peace was enlarged by divers ſtatutes, and then, for conveniency ſake, the office of high-conſtables grew into uſe for the receiving of the commands and precepts from the juſtices of peace, and diſtributing them to the petty-conſtables; and in token of this, the election of high-conſtables in moſt parts of the kingdom is by the appointment of the juſtices of peace, whereas the election of the petty-conſtable is by the people.

But there be two things unto which the office of conſtable hath ſpecial reference and relation, and which of neceſſity, or at leaſt a kind of congruity, muſt precede the juriſdiction of that office; I mean either the things themſelves, or ſomewhat that hath a ſimilitude or analogy towards them.

1. The one is the diviſion of the territory, or groſs of the ſhires, into hundreds, villages, and towns; for the high-conſtable is officer over the hundred, and the petty-conſtable is over the town or village.

2. The other is the court-leet, unto which the conſtable is attendant and miniſter; for there the conſtables are choſen by the jury, there ſworn, and there that part of their office which concerneth information is principally to be performed: for the jury being to preſent offences and offenders, are chiefly to take light from the conſtables of all matters of diſturbance and nuſance of the people; which they (in reſpect of their office) are preſumed to have beſt and moſt particular knowledge of.

The juriſdiction of the court-leet is to three ends.

1. The firſt to take the ancient oath of allegiance of all males above the age of twelve years.

2. The ſecond, to enquire of all offences againſt the peace; and for thoſe that are againſt the crown and peace both to enquire of only, and certify to the juſtices of gaol-delivery; but thoſe that are againſt the peace ſimply, they are to enquire of and puniſh.

3. The

3. The third is, to enquire of, puniſh, and remove all publick nuſances and grievances concerning infection of air, corruption of victuals, eaſe of chaffer, and contract of all other things that may hurt or grieve the people in general, in their health, quiet, and welfare.

And to theſe three ends, as matters of policy ſubordinate, the court-leet hath power to call upon the pledges that are to be taken for the good behaviour of the reſiants that are not tenants, and to enquire of all defaults of officers, as conſtables, ale-taſters, and the like: and likewiſe for the choice of conſtables, as aforeſaid.

The juriſdiction of theſe leets is either remaining in the King, and in that caſe exerciſed by the ſheriff in his Turn, which is the grand leet, or granted over to ſubjects; but yet it is ſtill the King's court.

2. Queſt. *Concerning the election of conſtables?*

Anſw. The election of the petty-conſtable is, as was ſaid, at the court-leet by the inqueſt that makes the preſentments; and the election of the head-conſtables is by the juſtices of the peace at their quarter ſeſſions.

3. Queſt. *How long is their office?*

Anſw. The office is annual, except they be removed.

4. Queſt. *Of what rank or order of men are they?*

Anſw. They be men (as it is now uſed) of inferior, yea, of baſe condition, which is a mere abuſe or degenerating from the firſt inſtitution; for the petty-conſtables in towns ought to be of the better ſort of reſiants in the ſame; ſave that they be not aged or ſickly, but of able bodies in reſpect of the keeping watch and toil of their place; nor muſt they be in any man's livery. And the high-conſtables ought to be of the ableſt freeholders, and of the ſubſtantialleſt ſort of yeomen, next to the degree of gentlemen; but ſhould not be incumbred with any other office, as mayor of a town, under-ſheriff, bailiff, *etc.*

5. Queſt. *What allowance have the conſtables?*

Anſw. They have no allowance, but are bound by duty to perform their office *gratis*; which may the rather be endured becauſe it is but annual, and they are not tied to keep or maintain any ſervants or under-miniſters, for that every one of the King's people within their limits are bound to aſſiſt them.

6. Queſt. *What if they refuſe to do their office?*

Anſw. Upon complaint made of their refuſal to any one juſtice of peace, the ſaid juſtice may bind them over to the ſeſſions, where, if they cannot excuſe themſelves by ſome juſt allegation, they may be fined and impriſoned for their contempt.

7. Queſt. *What is their authority or power?*

Anſw. The authority of conſtables, as it is ſubſtantive, and of itſelf, or ſubſtituted, and aſtricted to the warrants and commands of the juſtices of peace; ſo again it is original, or additional: for either it was given them by the common law, or elſe annexed by divers ſtatutes. And as for ſubordinate power, wherein the conſtable is only to execute the commandments of the juſtices of peace, and likewiſe the additional power which is given by divers ſtatutes, it is hard to comprehend them in any brevity; for that they do correſpond to the office and authority of the juſtices of peace, which is very large, and are created by the branches of ſeveral ſtatutes, which are things of diverſe and diſperſed natures: but for the original and ſubſtantive power of a conſtable, it may be reduced to three heads:

1. For matter of peace only.
2. For matter of peace and the crown.
3. For matter of nuſance, diſturbance, and diſorder, although they be not accompanied with violence and breach of the peace.

Firſt, For pacifying of quarrels begun, the conſtables may, upon hot words given, or likelihood of breach of the peace to enſue, command them in the King's name to keep the peace, and depart and forbear: and ſo he may, where an affray is made, part the ſame, and keep the parties aſunder, and arreſt and commit the breakers of the peace, if they will not obey; and call power to aſſiſt him for the ſame purpoſe.

For puniſhment of breach of peace paſt, the law is very tender and ſparing in giving authority to conſtables, becauſe he hath no power judicial, and the uſe of his office is rather for preventing or ſtaying of miſchief, than for puniſhing of offences; for in that part he is rather to execute the warrants of the juſtices; or, when any ſudden matter ariſeth upon his view, or notorious circumſtances, to apprehend offenders, and carry them before the juſtice of peace, and generally to impriſon in like caſes of neceſſity, where the caſe will not endure the preſent carrying of the party before the juſtices. And thus much for the matters of peace.

Secondly, For matters of the crown, the office of the conſtable conſiſteth chiefly in theſe four parts:

The firſt is arreſt.

The ſecond is ſearch.

The third is hue and cry.

And the fourth is ſeizure of goods.

All which the conſtable may perform of his own authority, without any warrant of the juſtices of peace.

1. For, firſt, if any man will lay murder or felony to another's charge, or do ſuſpect him of murder or felony, he may declare it to the conſtable, and the conſtable ought, upon ſuch declaration or complaint, to carry him before a juſtice; and if by common voice or fame any man be ſuſpected, the conſtable of duty ought to arreſt him, and bring him before a juſtice, though there be no other accuſation or declaration.

2. If any houſe be ſuſpected for the receiving or harbouring of any felon, the conſtable, upon complaint or common fame, may ſearch.

3. If any fly upon the felony, the conſtable ought to raiſe hue and cry.

4. And ſeize his goods, and keep them ſafe without impairing, and inventory them in the preſence of honeſt neighbours.

Thirdly, For matters of common nuſance and grievance, they are of a very variable nature, according to the ſeveral comforts which man's life and ſociety requireth, and the contraries which infeſt the ſame.

In all which, be it matter of corrupting air, water, or victuals, or ſtopping, ſtraitening, or indangering paſſage, or general deceits in weights, meaſures, or ſizes, or counterfeiting wares, and things vendible; the office of the conſtable is to give (as much as in him lies) information of them, and of the offenders, in leets, that they may be preſented; but becauſe leets are kept but twice in the year, and many of theſe things require preſent or ſpeedy remedy, the conſtable, in things notorious and of vulgar nature, ought to forbid and repreſs them in the mean time: if not, they are for their contempt to be fined and impriſoned, or both, by the juſtices in their ſeſſions.

8. Queſt. *What is their oath?*

Anſw. The oath they take is in this manner;

" You ſhall ſwear that you ſhall well and truly ſerve the King, and the " lord of this law-day; and you ſhall cauſe that the peace of our ſovereign " lord the King ſhall be well and duly kept, to your power; and you ſhall " arreſt all thoſe that you ſee committing riots, debates, and affrays in breach " of peace: and you ſhall well and duly endeavour yourſelf to your beſt " knowledge, that the ſtatutes of Wincheſter for watch, hue and cry, and " the ſtatutes made for the puniſhment of ſturdy beggars, vagabonds, rogues, " and other idle perſons coming within your office be truly executed, and the " offenders puniſhed: and you ſhall endeavour, upon complaint made, to apprehend barreters and riotous perſons making affrays, and likewiſe to apprehend felons; and if any of them make reſiſtance with force, and multitude " of miſ-doers, you ſhall make out-cry, and purſue them till they be taken; " and ſhall look unto ſuch perſons as uſe unlawful games; and you ſhall have " regard unto the maintenance of artillery; and you ſhall well and duly execute " all proceſs and precepts ſent unto you from the juſtices of peace of the county; " and you ſhall make good and faithful preſentments of all bloodſheds, outcries, affrays, and reſcues made within your office: and you ſhall well and

"duly, according to your power and knowledge, do that which belongeth to "your office of conſtable to do, for this year to come. So help," *etc.*

9. Queſt. *What difference is there betwixt the high conſtables and petty conſtables?*

Anſw. The authority is the ſame in ſubſtance, differing only in extent; the petty-conſtable ſerving only for one town, pariſh, or borough; the head-conſtable ſerving for the whole hundred: neither is the petty-conſtable ſubordinate to the head-conſtable for any commandment that proceeds from his own authority; but it is uſed, that the precepts of the juſtices be delivered unto the high-conſtables, who being few in number, may better attend the juſtices, and then the head-conſtables, by virtue thereof, make their precepts over to the petty-conſtables.

10. Queſt. *Whether a conſtable may appoint a deputy?*

Anſw. In caſe of neceſſity he may appoint a deputy, or in default thereof, the ſteward of the court-leet may; which deputy ought to be ſworn before the ſaid ſteward.

Now to conclude, the office of conſtables conſiſts wholly in theſe three things, viz.

1. The conſervation of the peace.
2. Serving the precepts and warrants.
3. Attendance for the execution of ſtatutes.

Of the juriſdiction of Juſtices itinerant in the principality of Wales.

THESE juſtices have power to hear and determine all criminal cauſes, which are called in the laws of England, the pleas of the crown; and herein they have the ſame juriſdiction that the juſtices have in the court of the King's bench. King's bench.

They have power to hear and determine all civil cauſes which are called in the laws of England, common-pleas, and do take knowledge of all fines levied of lands or hereditaments, without ſuing out any *Dedimus poteſtatem*; and herein they have the ſame juriſdiction that the juſtices of the common-pleas do execute at Weſtminſter. Common-pleas.

They have power to hear and determine all aſſizes upon diſſeiſin of lands or hereditaments, wherein they equal the juriſdiction of the juſtices of aſſize. Juſtices of aſſize.

They may hear and determine all notable violences and outrages perpetrated within their ſeveral precincts of the principality of Wales. And therein they have the ſame juriſdiction as the juſtices of *Oyer* and *Terminer*.

The Prothonotary's office is to draw all the pleadings, and to enter and engroſs all records and judgments in all trivial cauſes. These offices are in the King's gift.

The Clerk of the crown his office is to draw and engroſs all proceedings, arraignments, and judgments in criminal cauſes.

The Marſhal's office is to attend the perſons of the judges at their coming, ſitting, and going from their ſeſſions or court. These offices are in the judges diſpoſition.

The Crier is *tanquam publicus praeco*, to call forth ſuch perſons whoſe appearances are neceſſary, and to impoſe ſilence to the people.

The Office of Juſtice of Peace.

THERE is a commiſſion under the great ſeal of England to certain gentlemen, giving them power to preſerve the peace, and to reſiſt and puniſh all turbulent perſons, whoſe miſdemeanors may tend to the diſquiet of the people; and theſe be called the juſtices of peace, and every of them may well and truly be called and termed *Eirenarcha*.

The chief of them is called *Cuſtos rotulorum*, in whoſe cuſtody all the records of their proceedings are reſiding.

Others there are of that number called Juſtices of peace and *quorum*, becauſe in their commiſſion they have power to ſit and determine cauſes concerning breach of peace, and miſbehaviour. The words of their commiſſion are conceived thus; *Quorum* ſuch and ſuch, *unum vel duos etc. eſſe volumus*; and without ſome one or more of them of the *quorum*, no ſeſſions can be holden; and for the avoiding of a ſuperfluous number of ſuch juſtices (for through the ambition of many, it is counted a credit to be burthened with that authority) the ſtatute of

These justices appointed by the Lord Keeper.

38 H. VIII. hath expresly ordained that there shall be but eight justices of peace in every county. These justices do hold their sessions quarterly.

In every shire where the commission of the peace is established, there is also a Clerk of the peace for the entering and engrossing of all proceedings before the said justices. And this officer is appointed by the *custos rotulorum*.

The Office of Sheriffs.

EVERY shire hath its Sheriff, which word, being of the Saxon English, is as much to say shire-reeve, or minister of the county: his function or office is two-fold:

1. Ministerial.
2. Judicial.

As touching his ministerial office, he is the minister and executioner of all the process and precepts of the courts of law, and therefore ought to make return and certificate.

34 H. 8. cap. 16.

As touching his judicial office, he hath authority to hold two several courts of distinct natures: the one called the *Turn*, because he keepeth his turn and circuit about the shire, and holdeth the same court in several places, wherein he doth enquire of all offences perpetrated against the common law, and not forbidden by any statute or act of parliament; and the jurisdiction of this court is derived from justice distributive, and is for criminal offences, and is held twice every year.

The other is called the *County court*, wherein he doth determine all petty and small causes civil under the value of forty shillings, arising within the said county, and therefore it is called the county court.

The jurisdiction of this court is derived from justice commutative, and is held every month. The office of the sheriff is annual, and in the King's gift, whereof he is to have a patent.

The Office of Escheator.

EVERY shire hath an officer called an Escheator, which is to attend the King's revenue, and to seize into his Majesty's hands all lands escheated, and goods, or lands forfeited, and therefore is called escheator; and he is to enquire by good inquest of the death of the King's tenants, and to whom their lands are descended, and to seize their bodies and lands for ward, if they be within age, and is accountable for the same; and this officer is named by the Lord Treasurer of England.

34 H. 8. 20.

The Office of Coroner.

THERE are in every shire two other officers called Coroners, and by their office they are to inquest in what manner, and by whom every person dying of a violent death, came so to his death; and to enter the same of record; which is matter criminal, and a plea of the crown: and therefore they are called coroners, or crowners, as one hath written, because their enquiry ought to be publick *in coronâ populi*.

These officers are chosen by the freeholders of the shire, by virtue of a writ out of the chancery *de coronatore eligendo:* and of them I need not to speak more, because these officers are in use every where.

General observations touching Constables, Gaolers, and Bailiffs.

Constables of the hundred.

FORASMUCH as every shire is divided into hundreds, it is also by the said statute of 34 H. VIII. *cap.* 26. ordered that two sufficient gentlemen or yeomen shall be appointed constables of every hundred.

Gaolers office.

Also there is in every shire one gaol or prison appointed for the restraint of liberty of such persons as for their offences are thereunto committed, until they shall be delivered thence by course of law.

In every hundred of every shire the sheriff thereof shall nominate sufficient persons to be bailiffs of that hundred, and under-ministers of the sheriff; and they are to attend upon the justices in every of their courts and sessions.

THE ARGUMENT OF Sir FRANCIS BACON, Knight, His MAJESTY'S Solicitor General, In the Case of the POST-NATI of SCOTLAND, In the Exchequer Chamber, BEFORE THE Lord Chancellor and all the Judges of England.

May it please your Lordships,

THIS case your lordships do well perceive to be of exceeding great consequence. For whether you do measure that by place, that reacheth not only to the realm of England, but to the whole island of Great-Britain; or whether you measure that by time, that extendeth not only to the present time, but much more to future generations,

Et nati natorum, et qui nascentur ab illis:

And therefore as that is to receive at the bar a full and free debate, so I doubt not but that shall receive from your lordships a sound and just resolution according to law, and according to truth. For, my lords, though he were thought to have said well, that said that for his word, *Rex fortissimus*; yet he was thought to have said better, even in the opinion of a King himself, that said, *Veritas fortissima, et praevalet:* And I do much rejoice to observe such a concurrence in the whole carriage of this cause to this end, that truth may prevail.

The case no feigned, or framed case; but a true case between true parties.

The title handled formerly in some of the King's courts, and free-hold upon it; used indeed by his Majesty in his high wisdom to give an end to this great question, but not raised; *occasio*, as the schoolmen say, *arrepta, non porrecta.*

The case argued in the King's bench by M. Walter with great liberty, and yet with good approbation of the court: The persons assigned to be of counsel on that side, inferior to none of their quality and degree in learning; and some of them most conversant and exercised in the question.

The judges in the King's bench have adjourned it to this place for conference with the rest of their brethren. Your lordship, my lord Chancellor, though you be absolute judge in the court where you sit, and might have called to you such assistance of judges as to you had seemed good; yet would not forerun or lead in this case by any opinion there to be given; but have chosen rather to come yourself to this assembly; all tending (as I said) to this end, whereunto I for my part do heartily subscribe, *ut vincat veritas*, that truth may first appear, and then prevail. And I do firmly hold, and doubt not but I shall well maintain, that this is the truth, that Calvin the plaintiff is *ipso jure* by the law

of England a-natural born ſubject, to purchaſe free-hold, and to bring real actions within England. In this caſe I muſt ſo conſider the time, as I muſt much more conſider the matter. And therefore though it may draw my ſpeech into farther length; yet I dare not handle a caſe of this nature confuſedly, but purpoſe to obſerve the ancient and exact form of pleadings; which is,

Firſt, to explain or induce.

Then, to confute, or anſwer objections.

And laſtly, to prove, or confirm.

And firſt for explanation. The outward queſtion in this caſe is no more, but Whether a child born in Scotland ſince his Majeſty's happy coming to the crown of England, be naturalized in England, or no? But the inward queſtion or ſtate of the queſtion evermore beginneth where that which is confeſſed on both ſides doth leave.

It is confeſſed, that if theſe two realms of England and Scotland were united under one law and one parliament, and thereby incorporated and made as one kingdom, that the *Poſt-natus* of ſuch an union ſhould be naturalized.

It is confeſſed, that both realms are united in the perſon of our ſovereign; or (becauſe I will gain nothing by ſurreption, in the putting of the queſtion) that one and the ſame natural perſon is King of both realms.

It is confeſſed, that the laws and parliaments are ſeveral. So then, Whether this privilege and benefit of naturalization be an acceſſory or dependency upon that which is one and joint, or upon that which is ſeveral, hath been, and muſt be the depth of this queſtion. And therefore your lordſhips do ſee the ſtate of this queſtion doth evidently lead me by way of inducement to ſpeak of three things: The king, the law, and the privilege of naturalization. For if you well underſtand the nature of the two principals, and again the nature of the acceſſory; then ſhall you diſcern, to whether principal the acceſſory doth properly refer, as a ſhadow to a body, or iron to an adamant.

And therefore your lordſhips will give me leave in a caſe of this quality, firſt to viſit and open the foundations and fountains of reaſon, and not to begin with the poſitions and eruditions of a municipal law; for ſo was that done in the great caſe of mines; and ſo ought that to be done in all caſes of like nature. And this doth not at all detract from the ſufficiency of our laws, as incompetent to decide their own caſes, but rather addeth a dignity unto them, when their reaſon appearing as well as their authority, doth ſhew them to be as fine moneys, which are current not only by the ſtamp, becauſe they are ſo received, but by the natural metal, that is, the reaſon and wiſdom of them.

And maſter Littleton himſelf in his whole book doth commend but two things to the profeſſors of the law by the nameof his ſons; the one, the inquiring and ſearching out the reaſons of the law; and the other, the obſerving of the forms of pleadings. And never was there any caſe that came in judgment that required more, that Littleton's advice ſhould be followed in thoſe two points, than doth the preſent caſe in queſtion. And firſt of the King.

It is evident that all other commonwealths (monarchies only excepted) do ſubſiſt by a law precedent. For where authority is divided amongſt many officers, and they not perpetual, but annual or temporary, and not to receive their authority but by election, and certain perſons to have voice only to that election, and the like; theſe are buſy and curious frames, which of neceſſity do pre-ſuppoſe a law precedent, written or unwritten, to guide and direct them: but in monarchies, eſpecially hereditary, that is, when ſeveral families or lineages of people do ſubmit themſelves to one line, imperial or royal, the ſubmiſſion is more natural and ſimple, which afterwards by laws ſubſequent is perfected and made more formal; but that is grounded upon nature. That this is ſo, it appeareth notably in two things; the one the platforms and patterns which are found in nature of monarchies; the original ſubmiſſions, and their motives and occaſions. The platforms are three:

The firſt is that of a father, or chief of a family; who governing over his wife by prerogative of ſex, over his children by prerogative of age, and becauſe he

is

is author unto them of being, and over his ſervants by prerogative of virtue and providence (for he that is able of body, and improvident of mind, is *natura ſervus*) that is a very model of a King. So is the opinion of Ariſtotle, lib. iii. *Pol.* cap. 14. where he ſaith, *Verum autem regnum eſt, cum penes unum eſt rerum ſumma poteſtas: quod regnum procurationem familiae imitatur.*

And therefore Lycurgus, when one counſelled him to diſſolve the kingdom, and to eſtabliſh another form of eſtate, he anſwered, " Sir, begin to do that " which you adviſe firſt at home in your own houſe:" noting, that the chief of a family is as a King; and that thoſe that can leaſt endure Kings abroad, can be content to be Kings at home. And this is the firſt platform, which we ſee is merely natural.

The ſecond is that of a ſhepherd and his flock, which, Xenophon ſaith, Cyrus had ever in his mouth. For ſhepherds are not owners of the ſheep; but their office is to feed and govern: no more are Kings proprietaries, or owners of the people; for God is ſole owner of people. *The nations*, as the Scripture ſaith, *are his inheritance:* but the office of Kings is to govern, maintain, and protect people. And that is not without a myſtery, that the firſt King that was inſtituted by God, David, (for Saul was but an untimely fruit) was tranſlated from a ſhepherd, as you have it in Pſal. lxxviii. *Et elegit David ſervum ſuum, de gregibus ovium ſuſtulit eum, —— paſcere Jacob ſervum ſuum, et Iſrael haereditatem ſuam.* This is the ſecond platform; a work likewiſe of nature.

The third platform is the government of God himſelf over the world, whereof lawful monarchies are a ſhadow. And therefore both amongſt the Heathen, and amongſt the Chriſtians, the word (ſacred) hath been attributed unto Kings, becauſe of the conformity of a monarchy with a divine Majeſty; never to a ſenate or people. And ſo you find it twice in the lord Coke's Reports; once in the ſecond book, the biſhop of Wincheſter's caſe; and his fifth book, Cawdrie's caſe; and more anciently in the 10 of H. VII. fo. 18. *Rex eſt perſona mixta cum ſacerdote*; an attribute, which the ſenate of Venice, or a canton of Swiſſes, can never challenge. So, we ſee, there be precedents or platforms of monarchies, both in nature, and above nature; even from the monarch of heaven and earth to the king (if you will) in an hive of bees. And therefore other ſtates are the creatures of law; and this ſtate only ſubſiſteth by nature.

For the original ſubmiſſions, they are four in number: I will briefly touch them: The firſt is paternity or patriarchy, which was when a family growing ſo great as it could not contain itſelf within one habitation, ſome branches of the deſcendants were forced to plant themſelves into new families, which ſecond families could not by a natural inſtinct and inclination but bear a reverence, and yield an obeiſance to the eldeſt line of the ancient family from which they were derived.

The ſecond is, the admiration of virtue, or gratitude towards merit, which is likewiſe naturally infuſed into all men. Of this Ariſtotle putteth the caſe well, when it was the fortune of ſome one man, either to invent ſome arts of excellent uſe towards man's life, or to congregate people, that dwelt ſcattered, into one place, where they might cohabit with more comfort, or to guide them from a more barren land to a more fruitful, or the like: upon theſe deſerts, and the admiration and recompenſe of them, people ſubmitted themſelves.

The third, which was the moſt uſual of all, was conduct in war, which even in nature induceth as great an obligation as paternity. For as men owe their life and being to their parents in regard of generation, ſo they owe that alſo to ſaviours in the wars in regard of preſervation. And therefore we find in chap. xviii. of the book of Judges, ver. 22. *Dixerunt omnes viri ad Gideon, Dominare noſtri, tu et filii tui, quoniam ſervaſti nos de manu Madian.* And ſo we read when it was brought to the ears of Saul, that the people ſung in the ſtreets, *Saul hath killed his thouſand, and David his ten thouſand* of enemies, he ſaid ſtraightways: *Quid ei ſupereſt niſi ipſum regnum?* For whoſoever hath the military dependance, wants little of being King.

The fourth is an enforced ſubmiſſion, which is conqueſt, whereof it ſeemed Nimrod was the firſt precedent, of whom it is ſaid; *Ipſe coepit potens eſſe in terra, et*

erat robuſtus venator coram Domino. And this likewiſe is upon the ſame root, which is the ſaving or gift as it were of life and being; for the conqueror hath power of life and death over his captives; and therefore where he giveth them themſelves, he may reſerve upon ſuch a gift what ſervice and ſubjection he will. All theſe four ſubmiſſions are evident to be natural and more ancient than law.

To ſpeak therefore of law, which is the ſecond part of that which is to be ſpoken of by way of inducement. Law no doubt is the great organ by which the ſovereign power doth move, and may be truly compared to the ſinews in a natural body, as the ſovereignty may be compared to the ſpirits; for if the ſinews be without the ſpirits, they are dead and without motion; if the ſpirits move in weak ſinews, it cauſeth trembling: ſo the laws, without the King's power, are dead; the King's power, except the laws be corroborate, will never move conſtantly, but be full of ſtaggering and trepidation. But towards the King himſelf the law doth a double office or operation: the firſt is to entitle the King, or deſign him; and in that ſenſe Bracton ſaith well, lib. 1. fol. 5. and lib. 3. fol. 107. *Lex facit quod ipſe ſit Rex*; that is, it defines his title; as in our law, That the kingdom ſhall go to the iſſue female; that it ſhall not be departable amongſt daughters; that the half-blood ſhall be reſpected, and other points differing from the rules of common inheritance. The ſecond is (that whereof we need not fear to ſpeak in good and happy times, ſuch as theſe are) to make the ordinary power of the King more definite or regular; for it was well ſaid by a father, *plenitudo poteſtatis eſt plenitudo tempeſtatis.* And although the King, in his perſon, be *ſolutus legibus*, yet his acts and grants are limited by law, and we argue them every day.

But I demand, Do theſe offices or operations of law evacuate or fruſtrate the original ſubmiſſion, which was natural? Or ſhall it be ſaid that all allegiance is by law? No more than it can be ſaid, that *poteſtas patris*, the power of the father over the child, is by law: and yet no doubt laws do diverſly define of that alſo; the law of ſome nations having given fathers power to put their children to death; others, to ſell them thrice; others to diſinherit them by teſtament at pleaſure, and the like. Yet no man will affirm, that the obedience of the child is by law, though laws in ſome points do make it more poſitive: and even ſo it is of allegiance of ſubjects to hereditary monarchs, which is corroborate, and confirmed by law, but is the work of the law of nature. And therefore you ſhall find the obſervation true, and almoſt general in all ſtates, that their lawgivers were long after their firſt Kings, who governed for a time by natural equity without law: ſo was Theſeus long before Solon in Athens: ſo was Eurytion and Sous long before Lycurgus in Sparta: ſo was Romulus long before the *Decemviri*. And even amongſt ourſelves, there were more ancient Kings of the Saxons; and yet the laws ran under the name of Edgar's laws. And in the refounding of the kingdom in the perſon of William the Conqueror, when the laws were in ſome confuſion for a time, a man may truly ſay, that King Edward I. was the firſt lawgiver, who enacting ſome laws, and collecting others, brought the law to ſome perfection. And therefore I will conclude this point with the ſtyle which divers acts of parliaments do give unto the King: which term him very effectually and truly, "our natural ſovereign liege lord." And as it was ſaid by a principal judge here preſent when he ſerved in another place, and queſtion was moved by ſome occaſion of the title of Bullein's lands, that he would never allow that Queen Elizabeth (I remember it for the efficacy of the phraſe) ſhould be a ſtatute Queen, but a common-law Queen: ſo ſurely I ſhall hardly conſent that the King ſhall be eſteemed or called only our rightful ſovereign, or our lawful ſovereign, but our natural liege ſovereign; as acts of parliament ſpeak: for as the common law is more worthy than the ſtatute law; ſo the law of nature is more worthy than them both. Having ſpoken now of the King and the law, it remaineth to ſpeak of the privilege and benefit of naturalization itſelf; and that according to the rules of the law of England.

Naturalization is beſt diſcerned in the degrees whereby the law doth mount and aſcend thereunto. For it ſeemeth admirable unto me, to conſider with what a meaſured

a measured hand, and with how true proportions our law doth impart and confer the several degrees of this benefit. The degrees are four.

The first degree of persons (as to this purpose) that the law takes knowledge of, is an alien enemy; that is, such a one as is born under the obeisance of a prince or state that is in hostility with the King of England. To this person the law giveth no benefit or protection at all, but if he come into the realm after war proclaimed, or war in fact, he comes at his own peril, he may be used as an enemy: for the law accounts of him, but (as the Scripture saith) as of a spy that comes to see the weakness of the land. And so it is in 2 Ric. III. fol. 2. Nevertheless, this admitteth a distinction. For if he come with safe-conduct otherwise it is: for then he may not be violated, either in person or goods. But yet he must fetch his justice at the fountain head, for none of the conduit pipes are open to him; he can have no remedy in any of the King's courts; but he must complain himself before the King's privy council: there he shall have a proceeding summary from hour to hour, the cause shall be determined by natural equity, and not by rules of law; and the decree of the council shall be executed by aid of the chancery, as in 13 Ed. IV. And this is the first degree.

The second person is an alien friend, that is, such a one as is born under the obeisance of such a King or state as is confederate with the King of England, or at least not in war with him. To this person the law allotteth this benefit, that as the law accounts that the hold it hath over him, is but a transitory hold (for he may be an enemy,) so the law doth indue him but with a transitory benefit, that is, of moveable goods and personal actions. But for free-hold, or lease, or actions real or mixt, he is not enabled, except it be in *autre droit*. And so it is 9 E. IV. fol. 7. 19 E. IV. fol. 6. 5 Mar. and divers other books.

The third person is a denizen, using the word properly (for sometimes it is confounded with a natural born subject.) This is one that is but *subditus insitivus*, or *adoptivus*, and is never by birth, but only by the King's charter, and by no other mean, come he never so young into the realm, or stay he never so long. Mansion or habitation will not indenize him, no, nor swearing obedience to the King in a leet, which doth in-law the subject; but only (as I said) the King's grace and gift. To this person the law giveth an ability and capacity abridged, not in matter, but in time. And as there was a time when he was not subject, so the law doth not acknowledge him before that time. For if he purchase free-hold after his denization, he may take it; but if he have purchased any before, he shall not hold it: so if he have children after, they shall inherit; but if he have any before, they shall not inherit. So as he is but privileged *a parte post*, as the schoolmen say, and not *a parte ante*.

The fourth and last degree is a natural born subject, which is evermore by birth, or by act of parliament; and he is complete and entire. For in the law of England there is *nil ultra*, there is no more subdivision or more subtile division beyond these: and therein it seemeth to me that the wisdom of the law (as I said) is to be admired both ways, both because it distinguisheth so far, and because it doth not distinguish farther. For I know that other laws do admit more curious distinction of this privilege; for the Romans had, besides *jus civitatis*, which answereth to naturalization, *jus suffragii*. For although a man were naturalized to take lands and inheritance, yet he was not enabled to have a voice at passing of laws, or at election of officers. And yet farther they have *jus petitionis*, or *jus honorum*. For though a man had voice, yet he was not capable of honour and office. But these be the devises commonly of popular or free estates, which are jealous whom they take into their number, and are unfit for monarchies; but by the law of England the subject that is natural born, hath a capacity or ability to all benefits whatsoever; I say capacity or ability: But to reduce *potentiam in actum*, is another case. For an earl of Ireland, though he be naturalized in England, yet hath no voice in the parliament of England, except he have either a call by writ, or creation by patent; but he is capable of either. But upon this quadripartite division of the ability of persons, I do observe to your lordships three things, being all effectually pertinent to the question in hand.

The first is, that if any man conceive that the reasons for the *Post-nati* might serve as well for the *Ante-nati*, he may by the distribution which we have made, plainly perceive his error. For the law looketh not back, and therefore cannot, by any matter *ex post facto*, after birth, alter the state of the birth; wherein no doubt the law hath a grave and profound reason; which is this, in few words, *Nemo subito fingitur*; *aliud est nasci*, *aliud fieri*: we indeed more respect and affect those worthy gentlemen of Scotland whose merits and conversations we know; but the law that proceeds upon general reason, and looks upon no mens faces, affecteth and privilegeth those which drew their first breath under the obeisance of the King of England.

The second point is, that by the former distribution it appeareth that there be but two conditions by birth, either alien, or natural born *(nam tertium penitus ignoramus.)* It is manifest then, that if the *Post-nati* of Scotland be not natural born, they are alien born, and in no better degree at all than Flemings, French, Italians, Spanish, Germans, and others, which are all at this time alien friends, by reason his Majesty is in peace wih all the world.

The third point seemeth to me very worthy the consideration, which is, that in all the distributions of persons, and the degrees of abilities or capacities, the King's act is all in all, without any manner of respect to law or parliament. For it is the King that makes an alien enemy, by proclaiming a war, wherewith the law or parliament intermeddles not. So the King only grants safe-conducts, wherewith law and parliament intermeddle not. It is the King likewise that maketh an alien friend, by concluding a peace, wherewith law and parliament intermeddle not. It is the King that makes a denizen by his charter, absolutely of his prerogative and power, wherewith law and parliament intermeddle not. And therefore it is strongly to be inferred, that as all these degrees depend wholly upon the King's act, and no ways upon law or parliament; so the fourth, although it cannot by the King's patent, but by operation of law, yet that the law, in that operation, respecteth only the King's person, without respect of subjection to law or parliament. And thus much by way of explanation and inducement; which being all matter in effect confessed, is the strongest ground-work to that which is contradicted or controverted.

There followeth the confutation of the arguments on the contrary side.

That which hath been materially objected, may be reduced to four heads.

The first is, that the privilege of naturalization followeth allegiance, and that allegiance followeth the kingdom.

The second is drawn from that common ground, *cum duo jura concurrunt in una persona, aequum est ac si essent in duobus*; a rule, the words whereof are taken from the civil law; but the matter of it is received in all laws; being a very line or rule of reason, to avoid confusion.

The third consisteth of certain inconveniencies conceived to ensue of this general naturalization, *ipso jure*.

The fourth is not properly an objection, but a pre-occupation of an objection or proof on our part, by a distinction devised between countries devolute by descent, and acquired by conquest.

For the first, it is not amiss to observe that those which maintain this new opinion, whereof there is *altum silentium* in our books of law, are not well agreed in what form to utter and express that: for some said that allegiance hath respect to the law, some to the crown, some to the kingdom, some to the body politick of the King: so there is confusion of tongues amongst them, as it commonly cometh to pass in opinions that have their foundations in subtility and imagination of man's wit, and not in the ground of nature. But to leave their words, and to come to their proofs: they endeavour to prove this conceit, by three manner of proofs: first, by reason; then, by certain inferences out of statutes; and lastly, by certain book-cases, mentioning and reciting the forms of pleadings.

The reason they bring is this; that naturalization is an operation of the law of England; and so indeed it is, that may be the true *genus* of it.

Then

Then they add (that granted) that the law of England is of force only within the kingdom and dominions of England, and cannot operate but where it is in force. But the law is not in force in Scotland, therefore that cannot endure this benefit of naturalization by a birth in Scotland.

This reaſon is plauſible and ſenſible, but extremely erroneous. For the law of England, for matters of benefit, or forfeitures in England, operateth over the world. And becauſe it is truly ſaid that *reſpublica continetur poena et praemio*, I will put a caſe or two of either.

It is plain that if a ſubject of England had conſpired the death of the King in foreign parts, it was by the common law of England treaſon. How prove I that? By the ſtatute of 35 H. VIII. *cap.* 2. wherein you ſhall find no words at all of making any new caſe of treaſon which was not treaſon before, but only of ordaining a form of trial; *ergo* it was treaſon before: And if ſo, then the law of England works in foreign parts. So of contempts, if the King ſend his privy ſeal to any ſubject beyond the ſeas, commanding him to return, and he diſobey, no man will doubt but there is a contempt, and yet the fact enduring the contempt was committed in foreign parts.

Therefore the law of England doth extend to acts or matters done in foreign parts. So of reward, privilege or benefit, we need ſeek no other inſtance than the inſtance in queſtion; for I will put you a caſe that no man ſhall deny, where the law of England doth work and confer the benefit of naturalization upon a birth neither within the dominions of the kingdom, nor King of England. By the ſtatute of 25 E. III. which, if you will believe Huſſey, is but a declaration of the common law, all children born in any parts of the world, if they be of Engliſh parents continuing at that time as liege ſubjects to the King, and having done no act to forfeit the benefit of their allegiance, are *ipſo facto* naturalized. Nay, if a man look narrowly into the law in this point, he ſhall find a conſequence that may ſeem at the firſt ſtrange, but yet cannot be well avoided; which is, that if divers families of Engliſh men and women plant themſelves at Middleborough, or at Roan, or at Liſbon, and have iſſue, and their deſcendants do intermarry amongſt themſelves, without any intermixture of foreign blood; ſuch deſcendants are naturalized to all generations: for every generation is ſtill of liege parents, and therefore naturalized; ſo as you may have whole tribes and lineages of Engliſh in foreign countries.

And therefore it is utterly untrue that the law of England cannot operate or confer naturalization, but only within the bounds of the dominions of England.

To come now to their inferences upon ſtatutes; the firſt is out of this ſtatute which I laſt recited. In which ſtatute it is ſaid, that in four ſeveral places there are theſe words, "born within the allegiance of England;" or again, "born without the allegiance of England," which (ſay they) applies the allegiance to the kingdom, and not to the perſon of the King. To this the anſwer is eaſy; for there is no trope of ſpeech more familiar than to uſe the place of addition for the perſon. So we ſay commonly, the line of York, or the line of Lancaſter, for the lines of the duke of York, or the duke of Lancaſter.

So we ſay the poſſeſſions of Somerſet or Warwick, intending the poſſeſſions of the dukes of Somerſet, or earls of Warwick. So we ſee earls ſign, Saliſbury, Northampton, for the earls of Saliſbury or Northampton. And in the very ſame manner the ſtatute ſpeaks, allegiance of England, for allegiance of the King of England. Nay more, if there had been no variety in the penning of that ſtatute, this collection had had a little more force; for thoſe words might have been thought to have been uſed of purpoſe, and in propriety; but you may find in three other ſeveral places of the ſame ſtatute, allegiance and obeiſance of the King of England, and eſpecially in the material and concluding place, that is to ſay, children whoſe parents were at the time of their birth at the faith and obeiſance of the King of England. So that it is manifeſt by this indifferent and promiſcuous uſe of both phraſes, the one proper, the other improper, that no man can ground any inference upon theſe words, without danger of cavillation.

The ſecond ſtatute out of which they infer, is a ſtatute made in 32 Henr. VIII. touching the policy of ſtrangers tradeſmen within this realm. For

the parliament finding that they did eat the Engliſhmen out of trade, and that they entertained no apprentices but of their own nation, did prohibit that they ſhould receive any apprentice but the King's ſubjects. In which ſtatute is ſaid, that in nine ſeveral places there is to be found this context of words, "aliens born out of the King's obedience;" which is pregnant (ſay they) and doth imply that there be aliens born within the King's obedience. Touching this inference, I have heard it ſaid, *qui haeret in litera, haeret in cortice*; but this is not worthy the name of *cortex*, it is but *muſcus corticis*, the moſs of the bark. For it is evident that the ſtatute meant to ſpeak clearly and without equivocation, and to a common underſtanding. Now then there are aliens in common reputation, and aliens in preciſe conſtruction of law; the ſtatute then, meaning not to comprehend Iriſhmen, or Jerſeymen, or Calais-men, for explanation ſake, leſt the word alien might be extended to them in a vulgar acceptance, added thoſe further words, "born out of the King's obedience." Nay, what if we ſhould ſay, that thoſe words, according to the received laws of ſpeech, are no words of difference or limitation, but of declaration or deſcription of an alien, as if it had been ſaid, with a *videlicet*, aliens; that is, ſuch as are born out of the King's obedience? they cannot put us from that conſtruction. But ſure I am, if the bark make for them, the pith makes for us; for the privilege or liberty which the ſtatute means to deny to aliens of entertaining apprentices, is denied to none born within the King's obedience, call them aliens or what you will. And therefore by their reaſon, a *Poſt-natus* of Scotland ſhall by that ſtatute keep what ſtranger apprentices he will, and ſo is put in the degree of an Engliſh. The third ſtatute out of which inference is made, is the ſtatute of 14 E. III. *cap. ſcio*, which hath been ſaid to be our very caſe; and I am of that opinion too, but directly the other way. Therefore to open the ſcope and purpoſe of that ſtatute: After that the title to the crown of France was devolute to K. E. III. and that he had changed his ſtyle, changed his arms, changed his ſeal (as his Majeſty hath done) the ſubjects of England (ſaith the ſtatute) conceived a fear that the realm of England might become ſubject to the realm of France, or to the King as King of France. And I will give you the reaſons of the double fear, that it ſhould become ſubject to the realm of France. They had this reaſon of fear: Normandy had conquered England, Normandy was feudal of France, therefore becauſe the ſuperior ſeigniory of France was now united in right with the tenancy of Normandy, and that England, in regard of the conqueſt, might be taken as a perquiſite to Normandy, they had probable reaſon to fear that the kingdom of England might be drawn to be ſubject to the realm of France. The other fear, that England might become ſubject to the King as King of France, grew no doubt of this foreſight, that the Kings of England might be like to make their manſion and ſeat of their eſtate in France, in regard of the climate, wealth, and glory of that kingdom; and thereby the kingdom of England might be governed by the King's mandates and precepts iſſuing, as from the King of France. But they will ſay, whatſoever the occaſion was, here you have the difference authoriſed of ſubjection to a King generally, and ſubjection to a King as King of a certain kingdom: but to this I give an anſwer three-fold:

Firſt, it preſſeth not the queſtion; for doth any man ſay that a *Poſt-natus* of Scotland is naturalized in England, becauſe he is a ſubject of the King, as King of England? No, but generally becauſe he is the King's ſubject.

Secondly, The ſcope of this law is to make a diſtinction between crown and crown; but the ſcope of their argument is to make a difference between crown and perſon. Laſtly, this ſtatute (as I ſaid) is our very caſe retorted againſt them; for this is a direct ſtatute of ſeparation, which preſuppoſeth that the common law had made an union of the crowns in ſome degree, by virtue of the union in the King's perſon: if this ſtatute had not been made to ſtop and croſs the courſe of the common law in that point, as if Scotland now ſhould be ſuitors to the King, that an act might paſs to like effect, and upon like fear. And therefore if you will make good your diſtinction in this preſent caſe, ſhew us a ſtatute for that. But I hope you can ſhew no ſtatute of ſeparation between

England

England and Scotland. And if any man ſay that this was a ſtatute declaratory of the common law, he doth not mark how that is penned: for after a kind of hiſtorical declaration in the preamble, that England was never ſubject to France, the body of the act is penned thus: "The King doth grant and eſtabliſh;" which are words merely introductive *novae legis*, as if the King gave a charter of franchiſe, and did inveſt, by a donative, the ſubjects of England with a new privilege or exemption, which by the common law they had not.

To come now to the book-caſes which they put; which I will couple together, becauſe they receive one joint anſwer.

The firſt is 42 E. III. fol. where the book ſaith, exception was taken that the plaintiff was born in Scotland at Roſs, out of the allegiance of England.

The next is 22 H. VI. fol. 38. Adrian's caſe; where it is pleaded that a woman was born at Bruges, out of the allegiance of England.

The third is 13 Eliz. Dyer, fol. 300. where the caſe begins thus: *Doctor Story qui notorie dignoſcitur eſſe ſubditus regni Angliae.* In all theſe three (ſay they) that is pleaded, that the party is ſubject of the kingdom of England, and not of the King of England.

To theſe books I give this anſwer, that they be not the pleas at large, but the words of the reporter, who ſpeaks compendiouſly and narratively, and not according to the ſolemn words of the pleading. If you find a caſe put, that it is pleaded a man was ſeized in fee-ſimple, you will not infer upon that, that the words of the pleading were *in feodo ſimplici*, but *ſibi et haeredibus ſuis*. But ſhew me ſome precedent of a pleading at large, of *natus ſub ligeantia regni Angliae*; for whereas Mr. Walter ſaid that pleadings are variable in this point, he would fain bring it to that; but there is no ſuch matter; for the pleadings are conſtant and uniform in this point: they may vary in the word *fides*, or *ligeantia*, or *obedientia*, and ſome other circumſtances; but in the form of *regni* and *regis* they vary not: neither can there, as I am perſuaded, be any one inſtance ſhewed forth to the contrary. See 9 Eliz. 4. Baggot's Aſſize, fol. 7. where the pleading at large is entred in the book; there you have *alienigena natus extra ligeantiam domini regis Angliae.* See the precedents in the book of entries, pl. 7. and two other places; for there be no more: and there you ſhall find ſtill *ſub ligeantia domini regis*, or *extra ligeantiam domini regis*. And therefore the forms of pleading, which are things ſo reverend, and are indeed towards the reaſons of the law, as *palma*, and *pugnus*, containing the reaſon of the law, opened or unfolded, or diſplayed, they make all for us. And for the very words of reporters in books, you muſt acknowledge and ſay, *ilicet obruimur numero.* For you have 22 Aſſ. pl. 25. 27 Aſſ. the prior of Shells caſe, pl. 48. 14 H. IV. fol. 19. 3 H. VI. fol. 35. 6 H. VIII. in my lord Dyer, fol. 2. In all theſe books, the very words of the reporters have "the allegiance of the King," and not, the allegiance of England. And the book in the 24 Edw. III. which is your beſt book, although while it is toſſed at the bar, you have ſometimes the word "allegiance of England," yet when it comes to Thorp, chief juſtice, to give the rule, he ſaith, "we will be certified by the roll, whether Scotland "be within the allegiance of the King." Nay, that farther form of pleading beateth down your opinion: That it ſufficeth not to ſay that he is born out of the allegiance of the King, and ſtay there, but he muſt ſhew in the affirmative, under the allegiance of what King or ſtate he was born. The reaſon whereof cannot be, becauſe it may appear whether he be a friend or an enemy, for that in a real action is all one: nor it cannot be becauſe iſſue ſhall be taken thereupon; for the iſſue muſt ariſe on the other ſide upon *indigena* pleaded and traverſed. And therefore it can have no other reaſon, but to apprize the court more certainly, that the country of the birth is none of thoſe that are ſubject to the King. As for the trial, that it ſhould be impoſſible to be tried, I hold it not worth the anſwering; for the *Venire facias* ſhall go either where the natural birth is laid, although it be but by fiction, or if it be laid according to the truth, it ſhall be tried where the action is brought, otherwiſe you fall upon a main rock, that breaketh your argument in pieces; for how ſhould the birth of an Iriſhman be tried, or of a Jerſeyman? nay, how ſhould the birth of a ſubject be tried, that is born of Engliſh parents

in Spain or Florence, or any part of the world? For to all these the like objection of trial may be made, because they are within no counties: and this receives no answer. And therefore I will now pass on to the second main argument.

It is a rule of the civil law, say they, *Cum duo jura*, etc. when two rights do meet in one person, there is no confusion of them, but they remain still in the eye of law distinct, as if they were in several persons: and they bring examples of one man bishop of two sees, or one parson that is rector of two churches. They say this unity in the bishop or the rector doth not create any privity between the parishioners or dioceseners, more than if there were several bishops, or several parsons. This rule I allow (as was said) to be a rule not of the civil law only, but of common reason, but receiveth no forced or coined, but a true and sound distinction or limitation, which is, that it evermore faileth and deceiveth in cases where there is any vigour or operation of the natural person; for generally in corporations the natural body is but *suffulcimentum corporis corporati*, it is but as a stock to uphold and bear out the corporate body; but otherwise it is in the case of the crown, as shall be manifestly proved in due place. But to shew that this rule receiveth this distinction, I will put but two cases: the statute of 21 H. VIII. ordaineth that a marquess may retain six chaplains qualified, a lord treasurer of England four, a privy counsellor three. The lord treasurer Paulet was marquess of Winchester, lord treasurer of England, and privy counsellor, all at once. The question was, whether he should qualify thirteen chaplains? Now by the rule *Cum duo jura* he should; but adjudged, he should not. And the reason was, because the attendance of chaplains concerned and respected his natural person; he had but one soul, though he had three offices. The other case which I will put is the case of homage. A man doth homage to his lord for a tenancy held of the manor of Dale; there descendeth unto him afterwards a tenancy held of the manor of Sale, which manor of Sale is likewise in the hands of the same lord. Now by the rule *Cum duo jura*, he should do homage again, two tenancies and two seigniories, though but one tenant and one lord, *aequum est ac si esset in duobus:* but ruled that he should not do homage again: nay in the case of the King he shall not pay a second respect of homage, as upon grave and deliberate consideration it was resolved, 24 Hen. VIII. and *usus scaccarii*, as is there said, accordingly. And the reason is no other but because when a man is sworn to his lord, he cannot be sworn over again: he hath but one conscience, and the obligation of this oath trencheth between the natural person of the tenant and the natural person of the lord. And certainly the case of homage and tenure, and of homage liege, which is one case, are things of a near nature, save that the one is much inferior to the other; but it is good to behold these great matters of state in cases of lower element, as the eclipse of the sun is used to be in a pail of water.

The third main argument containeth certain supposed inconveniencies, which may ensue of a general naturalization *ipso jure*, of which kind three have been specially remembred.

The first is the loss of profit to the King upon letters of denization and purchases of aliens.

The second is the concourse of Scotsmen into this kingdom, to the infeebling of that realm of Scotland in people, and the impoverishing of this realm of England in wealth.

The third is, that the reason of this case stayeth not within the compass of the present case; for although it were some reason that Scotsmen were naturalized, being people of the same island and language, yet the reason which we urge, which is, that they are subject to the same King, may be applied to persons every way more estranged from us than they are; as if in future time, in the King's descendants, there should be a match with Spain, and the dominions of Spain should be united with the crown of England, by one reason (say they) all the West-Indies should be naturalized; which are people not only *alterius soli* but *alterius coeli*.

To these conceits of inconvenience, how easy it is to give answer, and how weak they are in themselves, I think no man that doth attentively ponder them, can doubt; for how small revenue can arise of such denizations

tions, and how honourable were it for the King to take eſcheats of his ſubjects, as if they were foreigners (for ſeizure of aliens lands are in regard the King hath no hold or command of their perſons and ſervices) every one may perceive. And for the confluence of Scotſmen, I think, we all conceive the ſpring-tide is paſt at the King's firſt coming in. And yet we ſee very few families of them throughout the cities and boroughs of England. And for the naturalizing of the Indies, we can readily help that, when the caſe comes; for we can make an act of parliament of ſeparation if we like not their conſort. But theſe being reaſons politick, and not legal, (and we are not now in parliament, but before a judgment-ſeat) I will not meddle with them, eſpecially ſince I have one anſwer which avoids and confounds all their objections in law; which is, that the very ſelf-ſame objections do hold in countries purchaſed by conqueſt. For in ſubjects obtained by conqueſt, it were more profit to indenizate by the poll; in ſubjects obtained by conqueſt, they may come in too faſt. And if King Henry VII. had accepted the offer of Chriſtopher Columbus, whereby the crown of England had obtained the Indies by conqueſt or occupation, all the Indies had been naturalized by the confeſſion of the adverſe part. And therefore ſince it is confeſſed, that ſubjects obtained by conqueſt are naturalized, and that all theſe objections are common and indifferent, as well to caſe of conqueſt as caſe of deſcent, theſe objections are in themſelves deſtroyed.

And therefore, to proceed now to overthrow that diſtinction of deſcent and conqueſt. Plato ſaith well, the ſtrongeſt of all authorities is, if a man can allege the authority of his adverſary againſt himſelf: we do urge the confeſſion of the other ſide, that they confeſſed the Iriſh are naturalized; that they confeſs the ſubjects of the iſles of Jerſey and Guernſey, and Berwick, to be naturalized, and the ſubjects of Calais and Tournay, when they were Engliſh, were naturalized; as you may find in the 5 Eliz. in Dyer, upon the queſtion put to the judges by Sir Nicholas Bacon, lord keeper.

To avoid this, they fly to a difference, which is new coined, and is (I ſpeak not to the diſadvantage of the perſons that uſe it; for they are driven to it *tanquam ad ultimum refugium*; but the difference itſelf) it is, I ſay, full of ignorance and error. And therefore, to take a view of the ſupports of this difference, they allege four reaſons.

The firſt is, that countries of conqueſt are made parcel of England, becauſe they are acquired by the arms and treaſure of England. To this I anſwer, that it were a very ſtrange argument, that if I wax rich upon the manor of Dale, and upon the revenue thereof purchaſe a cloſe by it, that it ſhould make that parcel of the manor of Dale. But I will ſet this new learning on ground with a queſtion or caſe put. For I oppoſe them that hold this opinion with this queſtion, If the King ſhould conquer any foreign country by an army compounded of Engliſhmen and Scotſmen, as it is like, whenſoever wars are, ſo it will be, I demand, whether this country conquered ſhall be naturalized both in England and Scotland, becauſe it was purchaſed by the joint arms of both? and if yea, Whether any man will think it reaſonable, that ſuch ſubjects be naturalized in both kingdoms; the one kingdom not being naturalized towards the other? Theſe are the intricate conſequences of conceits.

A ſecond reaſon they allege is, that countries won by conqueſt become ſubject to the laws of England, which countries patrimonial are not, and that the law doth draw the allegiance, and allegiance naturalization.

But to the major propoſition of that argument, touching the dependency of allegiance upon law, ſomewhat hath been already ſpoken, and full anſwer ſhall be given when we come to it. But in this place it ſhall ſuffice to ſay, that the minor propoſition is falſe; that is, that the laws of England are not ſuperinduced upon any country by conqueſt; but that the old laws remain until the King by his proclamation or letters patent declare other laws; and then if he will he may declare laws which be utterly repugnant, and differing from the laws of England. And hereof many ancient precedents and records may be ſhewed, that the reaſon why Ireland is ſubject to the laws of England is not *ipſo jure* upon conqueſt, but grew by a charter of King John; and that extended but to ſo much

much as was then in the King's poſſeſſion; for there are records in the time of King E. I. and II. of divers particular grants to ſundry ſubjects of Ireland and their heirs, that they might uſe and obſerve the laws of England.

The third reaſon is, that there is a politick neceſſity of intermixture of people in caſe of ſubjection by conqueſt, to remove alienations of mind, and to ſecure the ſtate; which holdeth not in caſe of deſcent. Here I perceive Mr. Walter hath read ſomewhat in matter of ſtate; and ſo have I likewiſe; though we may both quickly loſe ourſelves in cauſes of this nature. I find by the beſt opinions, that there be two means to aſſure and retain in obedience countries conquered, both very differing, almoſt in extremes, the one towards the other.

The one is by colonies, and intermixture of people, and tranſplantation of families, which Mr. Walter ſpoke of; and it was indeed the Roman manner: but this is like an old relique, much reverenced, and almoſt never uſed. But the other, which is the modern manner, and almoſt wholly in practice and uſe, is by gariſons and citadels, and liſts or companies of men of war, and other like matters of terror and bridle.

To the firſt of theſe (which is little uſed) it is true that naturalization doth conduce, but to the latter it is utterly oppoſite, as putting too great pride and means to do hurt in thoſe that are meant to be kept ſhort and low. And yet in the very firſt caſe, of the Roman proceeding, naturalization did never follow by conqueſt, during all the growth of the Roman empire; but was ever conferred by charters, or donations, ſometimes to cities and towns, ſometimes to particular perſons, and ſometimes to nations, until the time of Adrian the emperor, and the law *In orbe romano:* and that law or conſtitution is not referred to title of conqueſt and arms only, but to all other titles; as by the donation and teſtament of Kings, by ſubmiſſion, and dedition of ſtates, or the like: ſo as this difference was as ſtrange to them as to us. And certainly I ſuppoſe it will ſound ſtrangely in the hearing of foreign nations, that the law of England ſhould *ipſo facto* naturalize ſubjects of conqueſts, and ſhould not naturalize ſubjects which grow unto the King by deſcent; that is, that it ſhould confer the benefit and privilege of naturalization upon ſuch as cannot at the firſt but bear hatred and rancour to the ſtate of England, and have had their hands in the blood of the ſubjects of England, and ſhould deny the like benefit to thoſe that are conjoined with them by a more amiable mean; and that the law of England ſhould confer naturalization upon ſlaves and vaſſals (for people conquered are no better in the beginning) and ſhould deny it to freemen: I ſay, it will be marvelled at abroad, of what complexion the laws of England be made, that breedeth ſuch differences. But there is little danger of ſuch ſcandals; for this is a difference that the law of England never knew.

The fourth reaſon of this difference is, that in caſe of conqueſt the territory united can never be ſeparated again. But in caſe of deſcent, there is a poſſibility; if his Majeſty's line ſhould fail, the kingdoms may ſever again to their reſpective heirs; as in the caſe of 8 Hen. VI. where it is ſaid, that if land deſcend to a man from the anceſtor on the part of his father, and a rent iſſuing out of it from an anceſtor on the part of the mother; if the party die without iſſue, the rent is revived. As to this reaſon, I know well the continuance of the King's line is no leſs dear to thoſe that allege the reaſon, than to us that confute it. So as I do not blame the paſſing of the reaſon: but it is anſwered with no great difficulty; for, firſt, the law doth never reſpect remote and foreign poſſibilities, as notably appeared in the great caſe between Sir Hugh Cholmley and Houlford in the exchequer, where one in the remainder, to the end to bridle tenant in tail from ſuffering a common recovery, granted his remainder to the King; and becauſe he would be ſure to have it out again without charge or trouble when his turn was ſerved, he limited it to the King during the life of tenant in tail. Queſtion grew, whether this grant of remainder were good, yea or no. And it was ſaid to be frivolous and void, becauſe it could never by any poſſibility execute; for tenant in tail cannot ſurrender; and if he died, the remainder likewiſe ceaſed. To which it was anſwered, that there was a poſſibility that it might execute, which was thus: Put caſe, that

tenant

tenant in tail ſhould enter into religion, having no iſſue; then the remainder ſhould execute, and the King ſhould hold the land during the natural life of tenant in tail, notwithſtanding his civil death. But the court *una voce* exploded this reaſon, and ſaid, that monaſteries were down, and entries into religion gone, and they muſt be up again ere this could be; and that the law did not reſpect ſuch remote and foreign poſſibilities. And ſo we may hold this for the like: for I think we all hope, that neither of thoſe days ſhall ever come, either for monaſteries to be reſtored, or for the King's line to fail. But the true anſwer is, that the poſſibility ſubſequent, remote or not remote, doth not alter the operation of law for the preſent. For that ſhould be, as if in caſe of the rent which you put, you ſhould ſay, that in regard that the rent may be ſevered, it ſhould be ſaid to be *in eſſe* in the mean time, and ſhould be grantable; which is clearly otherwiſe. And ſo in the principal caſe, if that ſhould be (which God of his goodneſs forbid) *ceſſante cauſa ceſſat effectus*, the benefit of naturalization for the time to come is diſſolved. But that altereth not the operation of the law; *rebus ſic ſtantibus*. And therefore I conclude, that this difference is but a deviſe full of weakneſs and ignorance; and that there is one and the ſame reaſon of naturalizing ſubjects by deſcent, and ſubjects by conqueſt; and that is the union in the perſon of the King; and therefore that the caſe of Scotland is as clear as that of Ireland, and they that grant the one cannot deny the other. And ſo I conclude the ſecond part, touching confutation.

To proceed therefore to the proofs of our part, your lordſhips cannot but know many of them muſt be already ſpent in the anſwer which we have made to the objections. For *corruptio unius, generatio alterius*, holds as well in arguments, as in nature, the deſtruction of an objection begets a proof. But nevertheleſs I will avoid all iteration, leſt I ſhould ſeem either to diſtract your memories, or to abuſe your patience; but will hold myſelf only to theſe proofs which ſtand ſubſtantially of themſelves, and are not intermixed with matter of confutation. I will therefore prove unto your lordſhips, that the *poſt-natus* of Scotland is by the law of England natural, and ought ſo to be adjudged, by three courſes of proof.

1. Firſt, upon point of favour of law.
2. Secondly, upon reaſons and authorities of law.
3. And laſtly, upon former precedents and examples.

1. Favour of law: what mean I by that? The law is equal, and favoureth not. It is true, not perſons; but things or matters it doth favour. Is it not a common principle, that the law favoureth three things, life, liberty, and dower? And what is the reaſon of this favour? This, becauſe our law is grounded upon the law of nature. And theſe three things do flow from the law of nature, preſervation of life natural; liberty, which every beaſt or bird ſeeketh and affecteth naturally; the ſociety of man and wife, whereof dower is the reward natural. It is well, doth the law favour liberty ſo highly, as a man ſhall enfranchiſe his bondman when he thinketh not of it, by granting to him lands or goods; and is the reaſon of it *quia natura omnes homines erant liberi*; and that ſervitude or villenage doth croſs and abridge the law of nature? And doth not the ſelf-ſame reaſon hold in the preſent caſe? For, my lords, by the law of nature all men in the world are naturalized one towards another; they were all made of one lump of earth, of one breath of God; they had the ſame common parents: nay, at the firſt they were, as the Scripture ſheweth, *unius labii*, of one language, until the curſe; which curſe (thanks be to God) our preſent caſe is exempted from. It was civil and national laws that brought in theſe words, and differences, of *civis* and *exterus*, alien and native. And therefore becauſe they tend to abridge the law of nature, the law favoureth not them, but takes them ſtrictly; even as our law hath an excellent rule, That cuſtoms of towns and boroughs ſhall be taken and conſtrued ſtrictly and preciſely, becauſe they do abridge and derogate from the law of the land. So by the ſame reaſon all national laws whatſoever are to be taken ſtrictly and hardly in any point wherein they abridge, and derogate from the law of nature. Where-

upon I conclude that your lordſhips cannot judge the law for the other ſide, except the caſe be *luce clarius*. And if it appear to you but doubtful, as I think no man in his right ſenſes but will yield it to be at leaſt doubtful, then ought your lordſhips (under your correction be it ſpoken) to pronounce for us, becauſe of the favour of the law. Furthermore as the law of England muſt favour naturalization, as a branch of the law of nature, ſo it appears manifeſtly, that it doth favour it accordingly. For is it not much to make a ſubject naturalized? By the law of England, it ſhould ſuffice, either place or parents, if he be born in England it is no matter though his parents be Spaniards, or what you will. On the other ſide, if he be born of Engliſh parents, it ſkilleth not though he be born in Spain, or in any other place of the world. In ſuch ſort doth the law of England open her lap to receive in people to be naturalized; which indeed ſheweth the wiſdom and excellent compoſition of our law, and that it is the law of a warlike and magnanimous nation, fit for empire. For look, and you ſhall find that ſuch kind of eſtates have been ever liberal in point of naturalization: whereas merchant-like and envious eſtates have been otherwiſe.

For the reaſons of law joined with authorities, I do firſt obſerve to your lordſhips, that our aſſertion or affirmation is ſimple and plain: that it ſufficeth to naturalization, that there be one King, and that the party be *natus ad fidem regis*, agreeable to the definition of Littleton, which is: Alien is he which is born out of the allegiance of our lord the King. They of the other ſide ſpeak of reſpects, and *quoad*, and *quatenus*, and ſuch ſubtilities and diſtinctions. To maintain therefore our aſſertion, I will uſe three kinds of proofs.

The firſt is, that allegiance cannot be applied to the law or kingdom, but to the perſon of the King, becauſe the allegiance of the ſubject is more large and ſpacious, and hath a greater latitude and comprehenſion, than the law or the kingdom. And therefore it cannot be a dependency of that without the which it may of itſelf ſubſiſt. -

The ſecond proof which I will uſe, is, that the natural body of the King hath an operation and influence into his body politick, as well as his body politick hath upon his body natural; and therefore that although his body politick of King of England, and his body politick of King of Scotland, be ſeveral and diſtinct, yet nevertheleſs his natural perſon, which is one, hath an operation upon both, and createth a privity between them.

And the third proof is the binding text of five ſeveral ſtatutes.

For the firſt of theſe, I ſhall make it manifeſt, that the allegiance is of a greater extent and dimenſion than laws, or kingdom, and cannot conſiſt by the laws merely; becauſe it began before laws, it continueth after laws, and it is in vigour where laws are ſuſpended and have not their force. That it is more ancient than law, appeareth by that which was ſpoken in the beginning by way of inducement, where I did endeavour to demonſtrate, that the original age of kingdoms was governed by natural equity, that Kings were more ancient than law-givers, that the firſt ſubmiſſions were ſimple, and upon confidence to the perſon of Kings, and that the allegiance of ſubjects to hereditary monarchies can no more be ſaid to conſiſt by laws, than the obedience of children to parents.

That allegiance continueth after laws, I will only put the caſe, which was remembred by two great judges in a great aſſembly, the one of them now with God: which was; That if a King of England ſhould be expulſed his kingdom, and ſome particular ſubjects ſhould follow him in flight or exile in foreign parts, and any of them there ſhould conſpire his death; that, upon his recovery of his kingdom, ſuch a ſubject might by the law of England be proceeded with for treaſon committed and perpetrated at what time he had no kingdom, and in place where the law did not bind.

That allegiance is in vigour and force where the power of law hath a ceſſation, appeareth notably in time of wars, for *ſilent leges inter arma*. And yet the ſovereignty and imperial power of the King is ſo far from being then extinguiſhed or ſuſpended, as contrariwiſe it is raiſed and made more abſolute; for then he may proceed by his ſupreme authority, and martial law, without obſerving formalities of the laws of his kingdom. And therefore whoſoever ſpeaketh of

laws,

laws, and the King's power by laws, and the ſubjects obedience or allegiance to laws, ſpeak but of one half of the crown. For Bracton, out of Juſtinian, doth truly define the crown to conſiſt of laws and arms, power civil and martial, with the latter whereof the law doth not intermeddle: ſo as where it is much ſpoken, that the ſubjects of England are under one law, and the ſubjects of Scotland are under another law, it is true at Edinburgh or Stirling, or again in London or York; but if Engliſhmen and Scotſmen meet in an army royal before Calais, I hope, then they are under one law. So likewiſe not only in time of war, but in time of peregrination: If a King of England travel or paſs through foreign territories, yet the allegiance of his ſubjects followeth him; as appeareth in that notable caſe which is reported in Fleta, where one of the train of King Edward I. as he paſſed through France from the Holy Land, imbezelled ſome ſilver plate at Paris, and juriſdiction was demanded of this crime by the French King's counſel at law, *ratione ſoli*, and demanded likewiſe by the officers of King Edward *ratione perſonae*; and after much ſolemnity, conteſtation, and interpleading, it was ruled and determined for King Edward, and the party tried and judged before the knight marſhal of the King's houſe, and hanged after the Engliſh law, and execution in St. Germains meadows. And ſo much for my firſt proof.

For my ſecond main proof, that is drawn from the true and legal diſtinction of the King's ſeveral capacities; for they that maintain the contrary opinion do in effect deſtroy the whole force of the King's natural capacity, as if it were drowned and ſwallowed up by his politick. And therefore I will firſt prove to your lordſhips, that his two capacities are in no ſort confounded. And ſecondly, that as his capacity politick worketh ſo upon his natural perſon, as it makes it differ from all other the natural perſons of his ſubjects; ſo *e converſo*, his natural body worketh ſo upon his politick, as the corporation of the crown utterly differeth from all other corporations within the realm.

For the firſt, I will vouch you the very words which I find in that notable caſe of the duchy, where the queſtion was, whether the grants of King Edward VI. for duchy lands ſhould be avoided in points of nonage. The caſe, as your lordſhips know well, is reported by Mr. Plowden as the general reſolution of all the judges of England, and the King's learned counſel, Rouſwell the ſolicitor only excepted; there I find the ſaid words, Comment. fol. 215. "There "is in the King not a body natural alone, nor a body politick alone, but a body "natural and politick together: *corpus corporatum in corpore naturali, et corpus "naturale in corpore corporato.*" The like I find in the great caſe of the lord Berkley ſet down by the ſame reporter, Comment. fol. 234. "Though there "be in the King two bodies, and that thoſe two bodies are conjoined, yet are "they by no means confounded the one by the other."

Now then to ſee the mutual and reciprocal intercourſe, as I may term it, or influence, or communication of qualities, that theſe bodies have the one upon the other: The body politick of the crown indueth the natural perſon of the King with theſe perfections: That the King in law ſhall never be ſaid to be within age: that his blood ſhall never be corrupted; and that if he were attainted before, the very aſſumption of the crown purgeth it. That the King ſhall not take but by matter of record, although he take in his natural capacity as upon a gift in tail. That his body in law ſhall be ſaid to be as it were immortal; for there is no death of the King in law, but a demiſe, as it is termed: with many other the like privileges and differences from other natural perſons, too long to rehearſe, the rather becauſe the queſtion laboureth not in that part. But on the contrary part let us ſee what operations the King's natural perſon hath upon his crown and body politick: of which the chiefeſt and greateſt is, that it cauſeth the crown to go by deſcent, which is a thing ſtrange, and contrary to the courſe of all corporations, which evermore take in ſucceſſion, and not by deſcent; for no man can ſhew me in all the corporations of England, of what nature ſoever, whether they conſiſt of one perſon, or of many; or whether they be temporal or eccleſiaſtical, any one takes to him and his heirs,

but

but all to him and his ſucceſſors. And therefore here you may ſee what a weak courſe that is, to put caſes of biſhops and parſons, and the like, and to apply them to the crown. For the King takes to him and his heirs in the manner of a natural body, and the word (ſucceſſors) is but ſuperfluous; and where that is uſed, that is ever duly placed after the word (heirs,) "the King, his heirs, and "ſucceſſors."

Again, no man can deny but *uxor et filius ſunt nomina naturae*. A corporation can have no wife, nor a corporation can have no ſon: how is it then that it is treaſon to compaſs the death of the Queen or of the Prince? There is no part of the body politick of the crown in either of them, but it is entirely in the King. So likewiſe we find in the caſe of the lord Berkley, the queſtion was, whether the ſtatute of 35 Henry VIII. for that part which concerned Queen Katherine Par's jointure, were a publick act or no, of which the judges ought to take notice, not being pleaded; and judged a publick act. So the like queſtion came before your lordſhip, my lord Chancellor, in Serjeant Heale's caſe; whether the ſtatute of 11 Edward III. concerning the intailing of the dukedom of Cornwall to the Prince, were a publick act or no; and ruled likewiſe a publick act. Why? No man can affirm but theſe be operations of law, proceeding from the dignity of the natural perſon of the King; for you ſhall never find that another corporation whatſoever of a biſhop, or maſter of a college, or mayor of London, worketh any thing in law upon the wife or ſon of the biſhop or the mayor. And to conclude this point, and withal to come near to the caſe in queſtion, I will ſhew you where the natural perſon of the King hath not only an operation in the caſe of his wife and children, but likewiſe in the caſe of his ſubjects, which is the very queſtion in hand. As for example, I put this caſe: Can a Scotſman who is a ſubject to the natural perſon of the King, and not to the crown of England; can a Scotſman, I ſay, be an enemy by the law to the ſubjects of England? Or muſt he not of neceſſity, if he ſhould invade England, be a rebel and no enemy, not only as to the King, but as to the ſubject? Or can any letters of mart or repriſal be granted againſt a Scotſman that ſhall ſpoil an Engliſhman's goods at ſea? And certainly this caſe doth preſs exceeding near the principal caſe; for it proveth plainly, that the natural perſon of the King hath ſuch a communication of qualities with his body politick, as it makes the ſubjects of either kingdom ſtand in another degree of privity one towards the other, than they did before. And ſo much for the ſecond proof.

For the five acts of parliament which I ſpoke of, which are concluding to this queſtion:

The firſt of them is that concerning the baniſhment of Hugh Spencer in the time of King Edward II. in which act there is contained the charge and accuſation whereupon his exile proceeded. One article of which charge is ſet down in theſe words. "Homage and oath of the ſubject is more by reaſon of the "crown, than by reaſon of the perſon of the King. So that if the King doth not "guide himſelf by reaſon in right of the crown, his lieges are bound by their "oath to the crown to remove the King."

By which act doth plainly appear the perilous conſequence of this diſtinction concerning the perſon of the King and the crown. And yet I do acknowledge juſtly and ingenuouſly a great difference between that aſſertion and this, which is now maintained: for it is one thing to make things diſtinct, another thing to make them ſeparable, *aliud eſt diſtinctio, aliud ſeparatio*; and therefore I aſſure myſelf, that thoſe that now uſe and urge that diſtinction, do as firmly hold, that the ſubjection to the King's perſon and to the crown are inſeparable, though diſtinct, as I do. And it is true that the poiſon of the opinion and aſſertion of Spencer is like the poiſon of a ſcorpion, more in the tail than in the body: for it is the inference that they make, which is, that the King may be depoſed or removed, that is the treaſon and diſloyalty of that opinion. But by your leave, the body is never a whit the more wholeſome meat for having ſuch a tail belonging to it: therefore we ſee that is *locus lubricus*, an opinion from which a man may eaſily ſlide into an abſurdity. But upon this act of parliament I will only note one circumſtance more, and ſo leave it, which may add authority

unto it in the opinion of the wiſeſt; and that is, that theſe Spencers were not ancient nobles or great patriots that were charged and proſecuted by upſtarts and favourites: for then it might be ſaid, that it was but the action of ſome flatterers, who uſe to extol the power of monarchs to be infinite: but it was contrary; a proſecution of thoſe perſons being favourites by the nobility; ſo as the nobility themſelves, which ſeldom do ſubſcribe to the opinion of an infinite power of monarchs, yet even they could not endure, but their blood did riſe to hear that opinion, that ſubjection is owing to the crown rather than to the perſon of the King.

The ſecond act of parliament which determined this caſe, is the act of recognition in the firſt year of his Majeſty, wherein you ſhall find, that in two ſeveral places, the one in the preamble, the other in the body of the act, the parliament doth recognize, that theſe two realms of England and Scotland are under one imperial crown. The parliament doth not ſay under one monarchy or King, which might refer to the perſon, but under one imperial crown, which cannot be applied but to the ſovereign power of regiment comprehending both kingdoms. And the third act of parliament is the act made in the fourth year of his Majeſty's reign, for the abolition of hoſtile laws; wherein your lordſhips ſhall find likewiſe in two places, that the parliament doth acknowledge, that there is an union of theſe two kingdoms already begun in his Majeſty's perſon: ſo as by the declaration of that act, they have not only one King, but there is an union in inception in the kingdoms themſelves.

Theſe two are judgments in parliament by way of declaration of law, againſt which no man can ſpeak. And certainly theſe are righteous and true judgments to be relied upon; not only for the authority of them, but for the verity of them; for to any that ſhall well and deeply weigh the effects of law upon this conjunction, it cannot but appear, that although *partes integrales* of the kingdom (as the philoſophers ſpeak) ſuch as the laws, the officers, the parliament, are not yet commixed; yet nevertheleſs there is but one, and the ſelf-ſame fountain of ſovereign power depending upon the ancient ſubmiſſion, whereof I ſpake in the beginning; and in that ſenſe the crowns and the kingdoms are truly ſaid to be united.

And the force of this truth is ſuch, that a grave and learned gentleman, that defended the contrary opinion, did confeſs thus far: That in ancient times, when monarchies (as he ſaid) were but heaps of people without any exact form of policy; that then naturalization and communication of privileges did follow the perſon of the monarch; but otherwiſe ſince ſtates were reduced to a more exact form: ſo as thus far we did conſent; but ſtill I differ from him in this, that theſe more exact forms, wrought by time, and cuſtom, and laws, are nevertheleſs ſtill upon the firſt foundation, and do ſerve only to perfect and corroborate the force and bond of the firſt ſubmiſſion, and in no ſort to diſannul or deſtroy it.

And therefore with theſe two acts do I likewiſe couple the act of 14 Edward III. which hath been alledged of the other ſide. For by collating of that act with this former two, the truth of that we affirm will the more evidently appear, according unto the rule of reaſon: *oppoſita juxta ſe poſita magis eluceſcunt*. That act of 14 is an act of ſeparation. Theſe two acts formerly recited are acts tending to union. This act is an act that maketh a new law; it is by the words of grant and eſtabliſh. Theſe two acts declare the common law as it is, being by words of recognition and confeſſion.

And therefore upon the difference of theſe laws you may ſubſtantially ground this poſition: That the common law of England, upon the adjunction of any kingdom unto the King of England, doth make ſome degree of union in the crowns and kingdoms themſelves; except by a ſpecial act of parliament they be diſſevered.

Laſtly, the fifth act of parliament which I promiſed, is the act made in the 42 of E. III. cap. 10. which is an expreſs deciſion of the point in queſtion. The words are, "Item, (upon the petition put into parliament by the commons) "that infants born beyond the ſeas in the ſeigniories of Calais, and elſewhere "within the lands and ſeigniories that pertain to our ſovereign lord the King

" beyond the ſeas, be as able and inheritable of their heritage in England, as " other infants born within the realm of England, it is accorded that the com- " mon law and the ſtatute formerly made, be holden."

Upon this act I infer thus much; firſt, that ſuch as the petition mentioneth were naturalized, the practice ſhews; then if ſo, it muſt be either by common law or ſtatute, for ſo the words report: not by ſtatute, for there is no other ſtatute but 25 E. III. and that extends to the caſe of birth out of the King's obedience, where the parents are Engliſh; *ergo* it was by the common law, for that only remains. And ſo by the declaration of this ſtatute at the common law " all infants, born within the lands and ſeigniories (for I give you the " very words again) that pertain to our ſovereign lord the King, (it is not ſaid, " as are the dominions of England,) are as able and inheritable of their heritage " in England, as other infants born within the realm of England." What can be more plain? And ſo I leave ſtatutes and go to precedents; for though the one do bind more, yet the other ſometimes doth ſatisfy more.

For precedents, in the producing and uſing of that kind of proof, of all others it behoveth them to be faithfully vouched; for the ſuppreſſing or keeping back of a circumſtance, may change the caſe: and therefore I am determined to urge only ſuch precedents, as are without all colour or ſcruple of exception or objection, even of thoſe objections which I have, to my thinking, fully anſwered and confuted. This is now, by the providence of God, the fourth time that the line and Kings of England have had dominions and ſeigniories united unto them as patrimonies, and by deſcent of blood; four unions, I ſay, there have been incluſive with this laſt. The firſt was of Normandy, in the perſon of William, commonly called the Conqueror. The ſecond was of Gaſcoigne, and Guienne, and Anjou, in the perſon of King Henry II. in his perſon, I ſay, though by ſeveral titles. The third was of the crown of France, in the perſon of King Edward III. And the fourth of the kingdom of Scotland, in his Majeſty. Of theſe I will ſet aſide ſuch as by any cavillation can be excepted unto. Firſt, I will ſet aſide Normandy, becauſe it will be ſaid, that the difference of countries accruing by conqueſt, from countries annexed by deſcent, in matter of communication of privileges, holdeth both ways, as well of the part of the conquering kingdom, as the conquered; and therefore that although Normandy was not a conqueſt of England, yet England was a conqueſt of Normandy, and ſo a communication of privileges between them. Again, ſet aſide France, for that it will be ſaid that although the King had a title in blood, and by deſcent, yet that title was executed and recovered by arms, ſo as it is a mixt title of conqueſt and deſcent, and therefore the precedent not ſo clear.

There remains then Gaſcoingne and Anjou, and that precedent likewiſe I will reduce and abridge to a time, to avoid all queſtion. For it will be ſaid of them alſo, that after they were loſt and recovered *in ore gladii*, that the ancient title of blood was extinct; and that the King was in upon his new title by conqueſt: and Mr. Walter hath found a book-caſe in 13 H. VI. abridged by Mr. Fitz-Herbert, in title of *Protection*, *placito* 56. where a protection was caſt, *quia profecturus in Gaſconiam* with the earl of Huntingdon, and challenged becauſe it was not a voyage royal; and the juſtices thereupon required the ſight of the commiſſion, which was brought before them, and purported power to pardon feſonies, and treaſon, power to coin money, and power to conquer them that reſiſt: whereby Mr. Walter, finding the word *conqueſt*, collected that the King's title at that time was reputed to be by conqueſt; wherein I may not omit to give *obiter* that anſwer, which law and truth provideth, namely, that when any King obtaineth by war a country whereunto he hath right by birth, that he is ever in upon his ancient right, not upon his purchaſe by conqueſt; and the reaſon is, that there is as well a judgment and recovery by war and arms, as by law and courſe of juſtice. For war is a tribunal ſeat, wherein God giveth the judgment, and the trial is by battel, or duel, as in the caſe of trial of private right: and then it follows, that whoſoever cometh in by eviction, comes in his *remitter:* ſo as there will be no difference in countries whereof the right cometh by deſcent, whether the poſſeſſion be obtained peaceably, or by war. But yet

never-

nevertheleſs, becauſe I will utterly take away all manner of evaſion, and ſubterfuge, I will yet ſet apart that part of time, in and during the which the ſubjects of Gaſcoigne and Guienne might be thought to be ſubdued by a re-conqueſt. And therefore I will not meddle with the prior of Shelley's caſe, though it be an excellent caſe; becauſe it was in the time of 27 E. III. neither will I meddle with any caſes, records, or precedents, in the time of King H. V. or King H. VI. for the ſame reaſon; but will hold myſelf to a portion of time from the firſt uniting of theſe provinces in the time of King H. II. until the time of King John, at what time thoſe provinces were loſt; and from that time again unto the ſeventeenth year of the reign of King E. II. at what time the ſtatute of *praerogativa regis* was made, which altered the law in the point in hand.

That both in theſe times the ſubjects of Gaſcoigne, and Guienne, and Anjou, were naturalized for inheritance in England by the laws of England, I ſhall manifeſtly prove; and the proof proceeds, as to the former time (which is our caſe) in a very high degree *a minore ad majus*, and as we ſay, *a multo fortiori*. For if this privilege of naturalization remained unto them when the countries were loſt, and became ſubjects in poſſeſſion to another King, much more did they enjoy it as long as they continued under the King's ſubjection.

Therefore to open the ſtate of this point. After theſe provinces were, through the perturbations of the ſtate in the unfortunate time of King John, loſt and ſevered, the principal perſons which did adhere unto the French, were attainted of treaſon, and their eſcheats here in England taken and ſeized. But the people, that could not reſiſt the tempeſt when their heads and leaders were revolted, continued inheritable to their poſſeſſions in England; and reciprocally the people of England inherited and ſucceeded to their poſſeſſions in Gaſcoigne, and were both accounted *ad fidem utriuſque regis*, until the ſtatute of *praerogativa regis*; wherein the wiſdom and juſtice of the law of England is highly to be commended. For of this law there are two grounds of reaſon, the one of equity, the other of policy: that of equity was, becauſe the common people were in no fault, but, as the Scripture ſaith in a like caſe, *quid fecerunt oves iſtae?* It was the cowardice and diſloyalty of their governors that deſerved puniſhment, but *what had theſe ſheep done?* And therefore to have puniſhed them, and deprived them of their lands and fortunes, had been unjuſt. That of policy was, becauſe if the law had forthwith, upon the loſs of the countries by an accident of time, pronounced the people for aliens, it had been a kind of aceſſion of their right, and a diſclaimer in them, and ſo a greater difficulty to recover them. And therefore we ſee the ſtatute which altered the law in this point, was made in the time of a weak King, that, as it ſeemed, deſpaired ever to recover his right, and therefore thought better to have a little preſent profit by eſcheats, than the continuance of his claim, and the countenance of his right, by the admitting of them to enjoy their inheritance as they did before.

The ſtate therefore of this point being thus opened, it reſteth to prove our aſſertion, that they were naturalized; for the clearing whereof I ſhall need but to read the authorities, they be ſo direct and pregnant. The firſt is the very text of the ſtatute of *praerogativa regis*. *Rex habebit eſcaetas de terris Normannorum, cujuſcunque feodi fuerint, ſalvo ſervitio, quod pertinet ad capitales dominos feodi illius: et hoc ſimiliter intelligendum eſt, ſi aliqua haereditas deſcendat alicui nato in partibus tranſmarinis, et cujus anteceſſores fuerunt ad fidem regis Franciae, ut tempore regis Johannis, et non ad fidem regis Angliae, ſicut contigit de baronia Monumetae*, etc.

By which ſtatute it appears plainly, that before the time of King John there was no colour of any eſcheat, becauſe they were the King's ſubjects in poſſeſſion, as Scotland now is; but only it determines the law from that time forward.

This ſtatute, if it had in it any obſcurity, it is taken away by two lights, the one placed before it, and the other placed after it; both authors of great credit, the one for ancient, the other for late times: the former is Bracton, in his cap. *De exceptionibus, lib. 5. fol. 427.* and his words are theſe: *Eſt etiam et alia exceptio quae tenenti competit ex perſona petentis, propter defectum nationis, quae dilato-*

dilatoria eſt, et non perimit actionem, ut ſi quis alienigena qui fuerit ad fidem regis Franciae, et actionem inſtituat verſus aliquem, qui fuerit ad fidem regis Angliae, tali non reſpondeatur, ſaltem donec terrae fuerint communes.

By theſe words it appeareth, that after the loſs of the provinces beyond the ſeas, the naturalization of the ſubjects of thoſe provinces was in no ſort extinguiſhed, but only was in ſuſpence during the time of war, and no longer; for he ſaith plainly, that the exception, which we call plea, to the perſon of an alien, was not peremptory, but only dilatory, that is to ſay, during the time of war, and until there were peace concluded, which he terms by theſe words *donec terrae fuerint communes:* which though the phraſe ſeem ſomewhat obſcure, is expounded by Bracton himſelf, in his fourth book, fol. 297. to be of peace made and concluded, whereby the inhabitants of England and thoſe provinces might enjoy the profits and fruits of their lands in either place *communiter*, that is, reſpectively, or as well the one as the other: ſo as it is clear they were no aliens in right, but only interrupted and debarred of ſuits in the King's courts in time of war.

The authority after the ſtatute is that of Mr. Stamford, the beſt expoſitor of a ſtatute that hath been in our law; a man of reverend judgment, and excellent order in his writings; his words are in his expoſition upon the branch of the ſtatute which we read before. " By this branch it ſhould appear, that at " this time men of Normandy, Gaſcoigne, Guienne, Anjou, and Britain, were " inheritable within this realm, as well as Engliſhmen, becauſe that they were " ſometimes ſubjects to the Kings of England, and under their dominion, un- " til King John's time, as is afore ſaid; and yet after his time, thoſe men (ſaving " ſuch whoſe lands were taken away for treaſon) were ſtill inheritable within " this realm till the making of this ſtatute; and in the time of peace between " the two Kings of England and France, they were anſwerable within this " realm, if they had brought any action for their lands and tenements."

So as by theſe three authorities, every one ſo plainly purſuing the other, we conclude that the ſubjects of Gaſcoigne, Guienne, Anjou, and the reſt, from their firſt union by deſcent, until the making of the ſtatute of *praerogativa regis*, were inheritable in England, and to be anſwered in the King's courts in all actions, except it were in time of war. Nay more (which is *de abundanti*) that when the provinces were loſt, and diſannexed, and that the King was but King *de jure* over them, and not *de facto*; yet nevertheleſs the privilege of naturalization continued.

There reſteth yet one objection, rather plauſible to a popular underſtanding, than any ways forcible in law or learning, which is a difference taken between the kingdom of Scotland and theſe duchies, for that the one is a kingdom, and the other was not ſo; and therefore that thoſe provinces being of an inferior nature, did acknowledge our laws and ſeals, and parliament, which the kingdom of Scotland doth not.

This difference was well given over by Mr. Walter; for it is plain that a kingdom and abſolute dukedom, or any other ſovereign eſtate, do differ *honore*, and not *poteſtate:* for divers duchies and countries that are now, were ſometimes kingdoms; and divers kingdoms that are now, were ſometimes duchies, or of other inferior ſtyle: wherein we need not travel abroad, ſince we have in our own ſtate ſo notorious an inſtance of the country of Ireland, whereof King H. VIII. of late time was the firſt that writ himſelf King, the former ſtyle being lord of Ireland, and no more; and yet Kings had the ſame authority before, that they have had ſince, and the ſame nation the ſame marks of a ſovereign ſtate, as their parliaments, their arms, their coins, as they now have: ſo as this is too ſuperficial an allegation to labour upon.

And if any do conceive that Gaſcoigne and Guienne were governed by the laws of England: Firſt, that cannot be in reaſon; for it is a true ground, That whereſoever any prince's title unto any country is by law, he can never change the laws, for that they create his title: and therefore no doubt thoſe duchies retained their own laws; which if they did, then they could not be ſubject to the laws of England. And next, again, the fact or practice was otherwiſe, as ap-

peareth by all conſent of ſtory and record: for thoſe duchies continued governed by the civil law, their trials by witneſſes, and not by jury, their lands teſtamentary, and the like.

Now for the colours that ſome have endeavoured to give, that they ſhould have been ſubordinate to the government of England; they were partly weak, and partly ſuch as make ſtrongly againſt them: for as to that, that writs of *Habeas corpus* under the great ſeal of England have gone to Gaſcoigne, it is no manner of proof; for that the King's writs, which are mandatory, and not writs of ordinary juſtice, may go to his ſubjects into any foreign parts whatſoever, and under what ſeal it pleaſeth him to uſe. And as to that, that ſome acts of parliament have been cited, wherein the parliaments of England have taken upon them to order matters of Gaſcoigne; if thoſe ſtatutes be well looked into, nothing doth more plainly convince the contrary, for they intermeddle with nothing but that that concerneth either the Engliſh ſubjects perſonally, or the territories of England locally, and never the ſubjects of Gaſcoigne; for look upon the ſtatute of 27 E. III. cap. 5. there it is ſaid, that there ſhall be no foreſtalling of wines. But by whom? Only by Engliſh merchants; not a word of the ſubjects of Gaſcoigne, and yet no doubt they might be offenders in the ſame kind.

So in the ſixth chapter it is ſaid, that all merchants Gaſcoignes may ſafely bring wines into what part it ſhall pleaſe them: here now are the perſons of Gaſcoignes; but then the place whither? Into the realm of England. And in the ſeventh chap. that erects the ports of Bourdeaux and Bayonne for the ſtaple towns of wine; the ſtatute ordains "that if any (but who?) Engliſh merchant, "or his ſervants, ſhall buy or bargain other where, his body ſhall be arreſted by "the ſteward of Gaſcoigne, or the conſtable of Bourdeaux:" true, for the officers of England could not catch him in Gaſcoigne; but what ſhall become of him, ſhall he be proceeded with within Gaſcoigne? No, but he ſhall be ſent over into England into the Tower of London.

And this doth notably diſcloſe the reaſon of that cuſtom which ſome have ſought to wreſt the other way: that cuſtom, I ſay, whereof a form doth yet remain, that in every parliament the King doth appoint certain committees in the upper-houſe to receive the petitions of Normandy, Guienne, and the reſt; which, as by the former ſtatute doth appear, could not be for the ordering of the governments there, but for the liberties and good uſage of the ſubjects of thoſe parts when they came hither, or *vice verſa*, for the reſtraining of the abuſes and miſdemeanors of our ſubjects when they went thither.

Wherefore I am now at an end. For us to ſpeak of the miſchiefs, I hold it not fit for this place, leſt we ſhould ſeem to bend the laws to policy, and not to take them in their true and natural ſenſe. It is enough that every man knows, that it is true of theſe two kingdoms, which a good father ſaid of the churches of Chriſt: *ſi inſeparabiles inſuperabiles*. Some things I may have forgot, and ſome things perhaps I may forget willingly; for I will not preſs any opinion or declaration of late time which may prejudice the liberty of this debate; but *ex dictis, et ex non dictis*, upon the whole matter I pray judgment for the plaintiff.

A

PROPOSITION to his MAJESTY

BY

Sir FRANCIS BACON, Knight,

His MAJESTY's Attorney-General, and one of his Privy Council;

TOUCHING THE

COMPILING and AMENDMENT

OF THE

LAWS of ENGLAND.

YOUR Majeſty, of your favour, having made me Privy-Counſellor, and continuing me in the place of your Attorney-General (which is more than was theſe hundred years before) I do not underſtand it to be, that by putting off the dealing in cauſes between party and party, I ſhould keep holy-day the more; but that I ſhould dedicate my time to your ſervice whith leſs diſtraction. Wherefore, in this plentiful acceſſion of time, which I have now gained, I take it to be my duty, not only to ſpeed your commandments and the buſineſs of my place; but to meditate and to excogitate, of myſelf, wherein I may beſt, by my travels, derive your virtues to the good of your people, and return their thanks and increaſe of love to you again. And after I had thought of many things, I could find, in my judgment, none more proper for your Majeſty as a maſter, nor for me as a workman, than the reducing and recompiling of the laws of England.

Your Majeſty is a King bleſſed with poſterity; and theſe Kings ſort beſt with acts of perpetuity, when they do not leave them, inſtead of children; but tranſmit both line and merit to future generations. You are a great maſter in juſtice and judicature, and it were pity that the fruit of that virtue ſhould die with you. Your Majeſty alſo reigneth in learned times; the more, in regard of your own perfections and patronage of learning; and it hath been the miſhap of works of this nature, that the leſs learned time hath wrought upon the more learned, which now will not be ſo. As for myſelf, the law is my profeſſion, to which I am a debtor. Some little helps I may have of other learning, which may give form to matter; and your Majeſty hath ſet me in an eminent place, whereby in a work which muſt be the work of many, I may the better have coadjutors. Therefore, not to hold your Majeſty with any long preface, in that which I conceive to be nothing leſs than words, I will proceed to the matter: which matter itſelf nevertheleſs requireth ſomewhat briefly to be ſaid, both of the dignity, and likewiſe of the ſafety, and convenience of this work: and then to go to the main: that is to ſay, to ſhew how the work is to be done: which incidently alſo will beſt demonſtrate, that it is no vaſt nor ſpeculative thing, but real and feaſible. Calliſthenes, that followed Alexander's court, and was grown in ſome diſpleaſure with him, becauſe he could not well brook the Perſian adoration; at a ſupper (which with the Grecians was ever a great part alk) was deſired, becauſe he was an eloquent man, to ſpeak of ſome theme; which he did, and choſe for his theme, the praiſe of

the Macedonian nation; which though it were but a filling thing to praiſe men to their faces, yet he did it with ſuch advantage of truth, and avoidance of flattery, and with ſuch life, as the hearers were ſo raviſhed with it that they plucked the roſes off from their garlands, and threw them upon him; as the manner of applauſes then was. Alexander was not pleaſed with it, and by way of diſcountenance ſaid, It was eaſy to be a good orator, in a pleaſing theme: "But "(ſaith he to Calliſthenes) turn your ſtyle, and tell us now of our faults, that "we may have the profit, and not you only the praiſe;" which he preſently did with ſuch a force, and ſo piquantly, that Alexander ſaid, The goodneſs of his theme had made him eloquent before; but now it was the malice of his heart, that had inſpired him.

1. Sir, I ſhall not fall into either of thoſe two extremes, concerning the laws of England; they commend themſelves beſt to them that underſtand them; and your Majeſty's chief juſtice of your bench hath in his writings magnified them not without cauſe: certainly they are wiſe, they are juſt, and moderate laws; they give to God, they give to Cæſar, they give to the ſubjects, that which appertaineth. It is true, they are as mixt as our language, compounded of Britiſh, Roman, Saxon, Daniſh, Norman cuſtoms. And as our language is ſo much the richer, ſo the laws are the more complete: neither doth this attribute leſs to them, than thoſe that would have them to have ſtood out the ſame in all mutations; for no tree is ſo good firſt ſet, as by tranſplanting.

2. As for the ſecond extreme, I have nothing to do with it, by way of taxing the laws. I ſpeak only by way of perfecting them, which is eaſieſt in the beſt things: for that which is far amiſs, hardly receiveth amendment; but that which hath already, to that more may be given. Beſides, what I ſhall propound is not to the matter of the laws, but to the manner of their regiſtry, expreſſion, and tradition: ſo that it giveth them rather light than any new nature. This being ſo, for the dignity of the work I know ſcarcely where to find the like: for ſurely that ſcale, and thoſe degrees of ſovereign honour, are true and rightly marſhalled: Firſt the founders of ſtates; then the law-givers; then the deliverers and ſaviours after long calamities; then the fathers of their countries, which are juſt and prudent princes; and laſtly, conquerors, which honour is not to be received amongſt the reſt, except it be where there is an addition of more country and territory to a better government, than that was of the conquered. Of theſe, in my judgment, your Majeſty may with more truth than flattery be intitled to the firſt, becauſe of your uniting of Britain and planting Ireland; both which ſavour of the founder. That which I now propound to you, may adopt you alſo into the ſecond: law-givers have been called *principes perpetui*; becauſe as biſhop Gardiner ſaid in a bad ſenſe, that he would be biſhop an hundred years after his death, in reſpect of the long leaſes he made: ſo law-givers are ſtill Kings and Rulers after their deceaſe, in their laws. But this work, ſhining ſo in itſelf, needs no taper. For the ſafety and convenience thereof, it is good to conſider, and to anſwer thoſe objections or ſcruples which may ariſe, or be made againſt this work.

Obj. I. That it is a thing needleſs; and that the law, as it now is, is in good eſtate, comparable to any foreign law; and that it is not poſſible for the wit of man, in reſpect of the frailty thereof, to provide againſt the incertainties and evaſions, or omiſſions of law.

Reſp. For the compariſon with foreign laws, it is in vain to ſpeak of it; for men will never agree about it. Our lawyers will maintain for our municipal laws; civilians, ſcholars, travellers, will be of the other opinion.

But certain it is, that our laws, as they now ſtand, are ſubject to great incertainties, and variety of opinion, delays, and evaſions: whereof enſueth,

1. That the multiplicity and length of ſuits is great.

2. That the contentious perſon is armed, and the honeſt ſubject wearied and oppreſſed.

3. That the judge is more abſolute; who, in doubtful caſes, hath a greater ſtroke and liberty.

4. That

4. That the chancery courts are more filled, the remedy of law being often obſcure and doubtful.

5. That the ignorant lawyer ſhroudeth his ignorance of law, in that doubts are ſo frequent and many.

6. That mens aſſurances of their lands and eſtates by patents, deeds, wills, are often ſubject to queſtion, and hollow; and many the like inconveniencies.

It is a good rule and direction (for that all laws, *ſecundum magis et minus*, do participate of incertainties) that followeth: Mark, whether the doubts that ariſe, are only in caſes not of ordinary experience; or, which happen every day. If in the firſt only, impute it to the frailty of man's foreſight, that cannot reach by law to all caſes; but, if in the latter, be aſſured, there is a fault in the law. Of this I ſay no more, but that (to give every man his due) had it not been for Sir Edward Coke's *Reports* (which though they may have errors, and ſome peremptory and extrajudicial reſolutions, more than are warranted; yet they contain infinite good deciſions, and rulings over of caſes) the law, by this time, had been almoſt like a ſhip without ballaſt; for that the caſes of modern experience are fled from thoſe that are adjudged and ruled in former time.

But the neceſſity of this work is yet greater in the ſtatute law. For firſt, there are a number of enſnaring penal laws, which lie upon the ſubject; and if in bad times they ſhould be awaked, and put in execution, would grind them to powder.

There is a learned civilian that expoundeth the curſe of the prophet, *Pluet ſuper eos laqueos*, of a multitude of penal laws; which are worſe than ſhowers of hail or tempeſt upon cattle, for they fall upon men.

There are ſome penal laws fit to be retained, but their penalty too great; and it is ever a rule, That any over-great penalty (beſides the acerbity of it) deads the execution of the law.

There is a further inconvenience of penal laws, obſolete, and out of uſe; for that it brings a gangrene, neglect, and habit of diſobedience upon other wholeſome laws, that are fit to be continued in practice and execution; ſo that our laws endure the torment of Mezentius:

The living die in the arms of the dead.

Laſtly, There is ſuch an accumulation of ſtatutes concerning one matter, and they ſo croſs and intricate, as the certainty of law is loſt in the heap; as your Majeſty had experience laſt day upon the point, Whether the incendiary of Newmarket ſhould have the benefit of his clergy.

Obj. II. That it is a great innovation; and innovations are dangerous beyond foreſight.

Reſp. All purgings and medicines, either in the civil or natural body, are innovations: ſo as that argument is a common place againſt all noble reformations. But the truth is, that this work ought not to be termed or held for any innovation in the ſuſpected ſenſe. For thoſe are the innovations which are quarrelled and ſpoken againſt, that concern the conſciences, eſtates, and fortunes of particular perſons: but this of general ordinance pricketh not particulars, but paſſeth *ſine ſtrepitu*. Beſides, it is on the favourable part; for it eaſeth, it preſſeth not: and laſtly, it is rather matter of order and explanation, than of alteration. Neither is this without precedent in former governments.

The Romans, by their Decemvirs, did make their twelve tables; but that was indeed a new enacting or conſtituting of laws, not a regiſtring or recompiling; and they were made out of the laws of the Grecians, not out of their own cuſtoms.

In Athens they had *Sexviri*, which were ſtanding commiſſioners to watch and to diſcern what laws waxed unproper for the time; and what new law did, in any branch, croſs a former law, and ſo, *ex officio*, propounded their repeals.

King Lewis XI. of France, had it in his intention to have made one perfect and uniform law, out of the civil law Roman, and the provincial cuſtoms of France.

Juſtinian the Emperor, by commiſſions directed to divers perſons learned in the laws, reduced the Roman laws from vaſtneſs of volume, and a labyrinth of incertainties,

incertainties, unto that courſe of the civil law which is now in uſe. I find here at home of late years, that King Henry VIII, in the twenty-ſeventh of his reign, was authorized by parliament to nominate thirty two commiſſioners, part eccleſiaſtical, part temporal, to purge the canon law, and to make it agreeable to the law of God, and the law of the realm; and the ſame was revived in the fourth year of Edward VI, though neither took effect.

For the laws of Lycurgus, Solon, Minos, and others of ancient time, they are not the worſe, becauſe grammar ſcholars ſpeak of them: But things too ancient wax children with us again.

Edgar, the Saxon King, collected the laws of this kingdom, and gave them the ſtrength of a faggot bound, which formerly were diſperſed.

The ſtatutes of King Edward the firſt were fundamental. But, I doubt, I err, in producing ſo many examples: for, as Cicero ſaith to Cæſar, ſo may I ſay to your Majeſty; *Nil vulgare te dignum videri poſſit.*

Obj. III. In this purging of the courſe of the common laws and ſtatutes, much good may be taken away.

Reſp. In all purging, ſome good humours may paſs away; but that is largely recompenſed by lightening the body of much bad.

Obj. IV. Labour were better beſtowed, in bringing the common laws of England to a text law, as the ſtatutes are, and ſetting both of them down in method and by titles.

Reſp. It is too long a buſineſs to debate, whether *lex ſcripta, aut non ſcripta*, a text law, or cuſtoms well regiſtred, with received and approved grounds and maxims, and acts, and reſolutions judicial, from time to time duly entered and reported, be the better form of declaring and authorizing laws. It was the principal reaſon or oracle of Lycurgus, that none of his laws ſhould be written. Cuſtoms are laws written in living tables, and ſome traditions the church doth not diſauthorize. In all ſciences they are the ſoundeſt, that keep cloſe to particulars; and, ſure I am, there are more doubts that riſe upon our ſtatutes, which are a text law, than upon the common law, which is no text law. But, howſoever that queſtion be determined, I dare not adviſe to caſt the law into a new mould. The work, which I propound, tendeth to pruning and grafting the law, and not to plowing up and planting it again; for ſuch a remove I ſhould hold indeed for a perilous innovation.

Obj. V. It will turn the judges, counſellors of law, and ſtudents of law to ſchool again, and make them to ſeek what they ſhall hold and adviſe for law; and it will impoſe a new charge upon all lawyers to furniſh themſelves with new books of law.

Reſp. For the former of thoſe, touching the new labour, it is true it would follow, if the law were new moulded into a text law; for then men muſt be new to begin, and that is one of the reaſons for which I diſallow that courſe.

But in the way that I ſhall now propound, the entire body and ſubſtance of law ſhall remain, only diſcharged of idle and unprofitable or hurtful matter; and illuſtrated by order and other helps, towards the better underſtanding of it, and judgment thereupon.

For the latter, touching the new charge, it is not worth the ſpeaking of in a matter of ſo high importance; it might have been uſed of the new tranſlation of the bible, and ſuch like works. Books muſt follow ſciences, and not ſciences books.

The work it ſelf; and the way to reduce and recompile the LAWS *of* ENGLAND.

THIS work is to be done (to uſe ſome few words, which is the language of action and effect) in this manner.

It conſiſteth of two parts; the digeſt or recompiling of the common laws, and that of the ſtatutes.

In the firſt of theſe three things are to be done:

1. The compiling of a book *De antiquitatibus juris.*
2. The reducing or perfecting of the courſe or corps of the common laws.
3. The compoſing of certain introductive and auxiliary books touching the ſtudy of the laws.

For the first of these, all ancient records in your Tower, or elsewhere, containing acts of parliament, letters patents, commissions, and judgments, and the like, are to be searched, perused, and weighed: and out of these are to be selected those that are of most worth and weight, and in order of time, not of titles (for the more conformity with the year-books) to be set down and registred, rarely in *haec verba*; but summed with judgment, not omitting any material part; these are to be used for reverend precedents, but not for binding authorities.

For the second, which in the main, there is to be made a perfect course of the law *in serie temporis*, or year-books (as we call them) from Edward the First to this day: in the compiling of this course of law, or year-books, the points following are to be observed.

First, All cases which are at this day clearly no law, but constantly ruled to the contrary, are to be left out; they do but fill the volumes, and season the wits of students in a contrary sense of law. And so likewise all cases, wherein that is solemnly and long debated, whereof there is now no question at all, are to be entered as judgments only, and resolutions, but without the arguments, which are now become but frivolous: yet for the observation of the deeper sort of lawyers, that they may see how the law hath altered, out of which they may pick sometimes good use, I do advise, that upon the first in time of those obsolete cases there were a *memorandum* set, that at that time the law was thus taken, until such a time, *etc.*

Secondly, *Homonymiae*, (as Justinian calleth them) that is, cases merely of iteration and repetition, are to be purged away; and the cases of identity, which are best reported and argued, to be retained instead of the rest; the judgments nevertheless to be set down, every one in time as they are, but with a quotation or reference to the case where the point is argued at large: but if the case consist part of repetition, part of new matter, the repetition is only to be omitted.

Thirdly, As to the *Antinomiae*, cases judged to the contrary, it were too great a trust to refer to the judgment of the composers of this work, to decide the law either way, except there be a current stream of judgments of later times; and then I reckon the contrary cases amongst cases obsolete, of which I have spoken before: nevertheless this diligence would be used, that such cases of contradiction be specially noted and collected, to the end those doubts, that have been so long militant, may either, by assembling all the judges in the exchequer chamber, or by parliament, be put into certainty. For to do it by bringing them in question under feigned parties, is to be disliked. *Nil habeat forum ex scena.*

Fourthly, All idle queries, which are but seminaries of doubts, and incertainties, are to be left out and omitted, and no queries set down, but of great doubts well debated and left undecided for difficulty; but no doubting or upstarting queries, which though they be touched in argument for explanation, yet were better to die than to be put into the books.

Lastly, Cases reported with too great prolixity, would be drawn into a more compendious report; not in the nature of an abridgment, but tautologies and impertinences to be cut off: as for misprinting, and insensible reporting, which many times confound the students, that will be *obiter* amended; but more principally, if there be any thing in the report which is not well warranted by the record, that is also to be rectified: the course being thus compiled, then it resteth but for your Majesty to appoint some grave and sound lawyers, with some honourable stipend, to be * reporters for the time to come, and then this is settled for all times.

FOR the auxiliary books that conduce to the study and science of the law, they are three: Institutions; a treatise *De regulis juris*; and a better book *De ver-*

* This constitution of Reporters I obtained of the King, after I was Chancellor; and there are two appointed with a 100 *l.* a year a-piece stipend.

borum

borum significationibus, or terms of the law. For the Inſtitutions, I know well there be books of introductions (wherewith ſtudents begin) of good worth, eſpecially Littleton and Fitzherbert's *Natura brevium*; but they are no ways of the nature of an inſtitution; the office whereof is to be a key and general preparation to the reading of the courſe. And principally it ought to have two properties; the one a perſpicuous and clear order or method; and the other, an univerſal latitude or comprehenſion, that the ſtudents may have a little prenotion of every thing, like a model towards a great building. For the treatiſe *De regulis juris*, I hold it, of all other things, the moſt important to the health (as I may term it) and good inſtitutions of any laws: it is indeed like the ballaſt of a ſhip, to keep all upright and ſtable; but I have ſeen little in this kind, either in our law, or other laws, that ſatisfieth me. The naked rule or maxim doth not the effect: It muſt be made uſeful by good differences, ampliations, and limitations, warranted by good authorities; and this not by raiſing up of quotations and references, but by diſcourſe and deducement in a juſt tractate. In this I have travelled myſelf, at the firſt more curſorily *, ſince with more diligence, and will go on with it, if God and your Majeſty will give me leave. And I do aſſure your Majeſty, I am in good hope, that when Sir Edward Coke's Reports, and my rules and deciſions ſhall come to poſterity, there will be (whatſoever is now thought) queſtion, who was the greater lawyer? For the books of the terms of the law, there is a poor one, but I wiſh a diligent one, wherein ſhould be compriſed not only the expoſition of the terms of law, but of the words of all ancient records and precedents.

* See above P. 7.—38.

For the Abridgments, I could wiſh, if it were poſſible, that none might uſe them, but ſuch as had read the courſe firſt, that they might ſerve for repertories to learned lawyers, and not to make a lawyer in haſte; but ſince that cannot be, I wiſh there were a good abridgment compoſed of the two that are extant, and in better order. So much for the common law.

FOR the reforming and recompiling of the ſtatute law, it conſiſteth of four parts. *Statute Law.*

1. The firſt, to diſcharge the books of thoſe ſtatutes, where the caſe, by alteration of time, is vaniſhed; as Lombards Jews, Gauls half pence, *etc.* Thoſe may nevertheleſs remain in the libraries for antiquities, but no reprinting of them. The like of ſtatutes long ſince expired and clearly repealed; for if the repeal be doubtful, it muſt be ſo propounded to the parliament.

2. The next is, to repeal all ſtatutes which are ſleeping and not of uſe, but yet ſnaring and in force: in ſome of thoſe it will perhaps be requiſite to ſubſtitute ſome more reaſonable law, inſtead of them, agreeable to the time; in others a ſimple repeal may ſuffice.

3. The third, that the grievouſneſs of the penalty in many ſtatutes be mitigated, though the ordinance ſtand.

4. The laſt is, the reducing of concurrent ſtatutes, heaped one upon another, to one clear and uniform law. Towards this there hath been already, upon my motion, and your Majeſty's direction, a great deal of good pains taken; my Lord Hobart, myſelf, Serjeant Finch, Mr. Heneage Finch, Mr. Noye, Mr. Hackwell, and others, whoſe labours being of a great bulk, it is not fit now to trouble your Majeſty with any further particularity therein; only by this you may perceive the work is already advanced: but becauſe this part of the work, which concerneth the ſtatute laws, muſt of neceſſity come to parliament, and the houſes will beſt like that which themſelves guide, and the perſons that themſelves employ, the way were to imitate the precedent of the commiſſioners for the canon laws in 27 Hen. VIII, and 4 Edw. VI, and the commiſſioners for the union of the two realms, *primo* of your Majeſty, and ſo to have the commiſſioners named by both houſes; but not with a precedent power to conclude, but only to prepare and propound to parliament.

This is the beſt way, I conceive, to accompliſh this excellent work, of honour to your Majeſty's times, and of good to all times; which I ſubmit to your Majeſty's better judgment.

An OFFER to King JAMES OF A DIGEST To be made of the LAWS of ENGLAND.

MOST EXCELLENT SOVEREIGN,

AMONGST the degrees and acts of ſovereign, or rather heroical honour, the firſt or ſecond is the perſon and merit of a lawgiver. Princes that govern well are fathers of the people: but if a father breed his ſon well, or allow him well while he liveth, but leave him nothing at his death, whereby both he and his children, and his childrens children, may be the better, ſurely the care and piety of a father is not in him complete. So Kings, if they make a portion of an age happy by their good government, yet if they do not make teſtaments (as God Almighty doth) whereby a perpetuity of good may deſcend to their country, they are but mortal and tranſitory benefactors. Domitian, a few days before he died, dreamed that a golden head did riſe upon the nape of his neck: which was truly performed in the golden age that followed his times for five ſucceſſions. But Kings, by giving their ſubjects good laws, may (if they will) in their own time, join and graft this golden head upon their own necks after their death. Nay, they may make Nabuchodonozor's image of monarchy golden from head to foot. And if any of the meaner ſort of politicks, that are ſighted only to ſee the worſt of things, think, that laws are but cobwebs, and that good Princes will do well without them, and bad will not ſtand much upon them; the diſcourſe is neither good nor wiſe. For certain it is, that good laws are ſome bridle to bad Princes, and as a very wall about government. And if tyrants ſometime make a breach into them, yet they mollify even tyranny itſelf, as Solon's laws did the tyranny of Piſiſtratus: and then commonly they get up again, upon the firſt advantage of better times. Other means to perpetuate the memory and merits of ſovereign Princes are inferior to this. Buildings of temples, tombs, palaces, theatres, and the like, are honourable things, and look big upon poſterity: but Conſtantine the Great gave the name well to thoſe works, when he uſed to call Trajan, that was a great builder, Parietaria, wall-flower, becauſe his name was upon ſo many walls: ſo if that be the matter, that a King would turn wall-flower, or pellitory of the wall, with coſt he may. Adrian's vein was better, for his mind was to wreſtle a fall with time; and being a great progreſſor through all the Roman empire, whenever he found any decays of bridges, or highways, or cuts of rivers and ſewers, or walls, or banks, or the like, he gave ſubſtantial order for their repair with the better. He gave alſo multitudes of charters and liberties for the comfort of corporations and companies in decay: ſo that his bounty did ſtrive with the ruins of time. But yet this, though it were an excellent diſpoſition, went but in effect to the caſes and ſhells of a commonwealth. It was nothing to virtue or vice. A bad man might indifferently take the benefit and eaſe of his ways and bridges, as well as a good; and bad people might purchaſe good charters. Surely the better works of perpetuity in Princes are thoſe, that waſh the inſide of the cup: ſuch as are foundations of colleges and lectures for learning and education of youth; likewiſe foundations and inſtitutions of orders and fraternities, for nobleneſs, enterpriſe, and obedience, and the like. But yet theſe alſo are but like plantations of orchards and gardens, in plots and ſpots of ground here and there; they do not till over the whole kingdom, and make it fruitful, as doth the eſtabliſhing of good laws and ordinances; which makes a whole nation to be as a well-ordered college or foundation.

This kind of work, in the memory of times, is rare enough to ſhew it excellent; and yet not ſo rare, as to make it ſuſpected for impoſſible, inconvenient, or unſafe. Moſes, that gave laws to the Hebrews, becauſe he was the ſcribe of God himſelf, is fitter to be named for honour's ſake to other lawgivers, than to be numbered or ranked amongſt them. Minos, Lycurgus, and Solon, are

examples for themes of grammar ſcholars. For ancient perſonages and characters now-a-days uſe to wax children again; though that parable of Pindarus be true, the beſt thing is water: for common and trivial things are many times the beſt, and rather deſpiſed upon pride, becauſe they are vulgar, than upon cauſe or uſe. Certain it is, that the laws of thoſe three lawgivers had great prerogatives. The firſt of fame, becauſe they were the pattern amongſt the Grecians: the ſecond of laſting, for they continued longeſt without alteration: the third, of a ſpirit of reviver, to be often oppreſſed, and often reſtored.

Amongſt the ſeven Kings of Rome four were law-givers: for it is moſt true, that a diſcourſer of Italy ſaith; "there was never ſtate ſo well ſwaddled in the "infancy, as the Roman was by the virtue of their firſt Kings; which was a "principal cauſe of the wonderful growth of that ſtate in after-times."

The Decemvirs laws were laws upon laws, not the original; for they grafted laws of Græcia upon the Roman ſtock of laws and cuſtoms: but ſuch was their ſucceſs, as the twelve tables which they compiled were the main body of the laws which framed and wielded the great body of that eſtate. Theſe laſted a long time, with ſome ſupplementals and the Pretorian edicts *in albo*; which were, in reſpect of laws, as writing tables in reſpect of braſs; the one to be put in and out, as the other is permanent. Lucius Cornelius Sylla reformed the laws of Rome: for that man had three ſingularities, which never tyrant had but he; that he was a lawgiver, that he took part with the nobility, and that he turned private man, not upon fear, but upon confidence.

Cæſar long after deſired to imitate him only in the firſt, for otherwiſe he relied upon new men; and for reſigning his power Seneca deſcribeth him right; *Caeſar gladium cito condidit, nunquam poſuit.* Cæſar ſoon ſheathed his ſword, but never put it off. And himſelf took it upon him, ſaying in ſcorn of Sylla's reſignation; *Sylla neſcivit literas, dictare non potuit*, "Sylla knew no letters, he could not "dictate." But for the part of a lawgiver, Cicero giveth him the attribute; *Caeſar, ſi ab eo quaereretur, quid egiſſet in toga; leges ſe reſpondiſſet multas et praeclaras tuliſſe*; "If you had aſked Cæſar what he did in the gown, he would "have anſwered, that he made many excellent laws." His nephew Auguſtus did tread the ſame ſteps, but with deeper print, becauſe of his long reign in peace; whereof one of the poets of his time ſaith,

Pace data terris, animum ad civilia vertit
Jura ſuum; legeſque tulit juſtiſſimus auctor.

From that time there was ſuch a race of wit and authority, between the commentaries and deciſions of the lawyers, and the edicts of the emperors, as both law and lawyers were out of breath. Whereupon Juſtinian in the end recompiled both, and made a body of laws ſuch as might be wielded, which himſelf calleth glorioufly, and yet not above truth, the edifice or ſtructure of a ſacred temple of juſtice, built indeed out of the former ruins of books, as materials, and ſome novel conſtitutions of his own.

In Athens they had *Sexviri*, as Æſchines obſerveth, which were ſtanding commiſſioners, who did watch to diſcern what laws waxed improper for the times, and what new law did in any branch croſs a former law, and ſo *ex officio* propounded their repeal.

King Edgar collected the laws of this kingdom, and gave them the ſtrength of a faggot bound, which formerly were diſperſed; which was more glory to him, than his ſailing about this iſland with a potent fleet: for that was, as the Scripture ſaith, *via navis in mari*, "the way of a ſhip in the ſea;" it vaniſhed, but this laſteth. Alphonſo the wiſe (the ninth of that name) King of Caſtile, compiled the digeſt of the laws of Spain, intitled the *Siete Partidas*; an excellent work, which he finiſhed in ſeven years. And as Tacitus noteth well, that the capitol, though built in the beginnings of Rome, yet was fit for the great monarchy that came after; ſo that building of laws ſufficeth the greatneſs of the empire of Spain, which ſince hath enſued.

Lewis XI. had it in his mind (though he performed it not) to have made one conſtant law of France, extracted out of the civil Roman law, and the cuſtoms of provinces which are various, and the King's edicts, which with the French are ſtatutes. Surely he might have done well, if, like as he brought the crown (as he ſaid himſelf) from Page, ſo he had brought his people from Lackey; not to

run up and down for their laws to the civil law, and the ordinances and the cuſtoms and the diſcretions of courts, and diſcourſes of philoſophers, as they uſe to do.

King Henry VIII. in the twenty ſeventh year of his reign, was authorized by parliament to nominate thirty-two commiſſioners, part eccleſiaſtical, and part temporal, to purge the canon law, and to make it agreeable to the law of God, and the law of the land; but it took not effect: for the acts of that King were commonly rather proffers and fames, than either well-grounded, or well purſued: but, I doubt, I err in producing ſo many examples. For as Cicero ſaid to Cæſar, ſo I may ſay to your Majeſty, *Nil vulgare te dignum videri poſſit.* Though indeed this well underſtood is far from vulgar: for that the laws of the moſt kingdoms and ſtates have been like buildings of many pieces, and patched up from time to time according to occaſions, without frame or model.

Now for the laws of England (if I ſhall ſpeak my opinion of them without partiality either to my profeſſion or country) for the matter and nature of them, I hold them wiſe, juſt, and moderate laws: they give to God, they give to Cæſar, they give to the ſubject, what appertaineth. It is true they are as mixt as our language, compounded of Britiſh, Roman, Saxon, Daniſh, Norman cuſtoms: and ſurely as our language is thereby ſo much the richer, ſo our laws are likewiſe by that mixture the more complete.

Neither doth this attribute leſs to them, than thoſe that would have them to have ſtood out the ſame in all mutations. For no tree is ſo good firſt ſet, as by tranſplanting and grafting. I remember what happened to Calliſthenes, that followed Alexander's court, and was grown into ſome diſpleaſure with him, becauſe he could not well brook the Perſian adoration. At a ſupper (which with the Grecians was a great part talk) he was deſired (the King being preſent) becauſe he was an eloquent man, to ſpeak of ſome theme, which he did; and choſe for his theme, the praiſe of the Macedonian nation, which though it were but a filling thing to praiſe men to their faces, yet he performed it with ſuch advantage of truth, and avoidance of flattery, and with ſuch life, as was much applauded by the hearers. The King was the leſs pleaſed with it, not loving the man, and by way of diſcountenance ſaid: It was eaſy to be a good orator in a pleaſing theme. "But," ſaith he to him, "turn your ſtyle, and tell us now of our faults, that "we may have the profit, and not you the praiſe only;" which he preſently did with ſuch quickneſs, that Alexander ſaid, That malice made him eloquent then, as the theme had done before. I ſhall not fall into either of theſe extremes, in this ſubject of the laws of England; I have commended them before for the matter, but ſurely they aſk much amendment for the form; which to reduce and perfect, I hold to be one of the greateſt dowries that can be conferred upon this kingdom: which work, for the excellency, as it is worthy your Majeſty's act and times, ſo it hath ſome circumſtance of propriety agreeable to your perſon. God hath bleſſed your Majeſty with poſterity, and I am not of opinion that Kings that are barren are fitteſt to ſupply perpetuity of generations, by perpetuity of noble acts; but contrariwiſe, that they that leave poſterity are the more intereſted in the care of future times; that as well their progeny, as their people, may participate of their merit.

Your Majeſty is a great maſter in juſtice and judicature, and it were pity the fruit of that your virtue ſhould not be tranſmitted to the ages to come. Your Majeſty alſo reigneth in learned times, the more (no doubt) in regard of your own perfection in learning, and your patronage thereof. And it hath been the miſhap of works of this nature, that the leſs learned time hath (ſometimes) wrought upon the more learned, which now will not be ſo. As for myſelf, the law was my profeſſion, to which I am a debtor: ſome little helps I have of other arts, which may give form to matter; and I have now (by God's merciful chaſtiſement, and by his ſpecial providence) time and leiſure to put my talent, or half talent, or what it is, to ſuch exchanges as may perhaps exceed the intereſt of an active life. Therefore, as in the beginning of my troubles, I made offer to your Majeſty to take pains in the ſtory of England, and in compiling a method and digeſt of your laws, ſo have I performed the firſt (which reſted but upon myſelf) in ſome part; and I do in all humbleneſs renew the offer of this latter (which will require help and aſſiſtance) to your Majeſty, if it ſhall ſtand with your good pleaſure to employ my ſervice therein.

THE JUDICIAL CHARGE OF Sir FRANCIS BACON, Knight, The KING's Solicitor,

Upon the commiſſion of Oyer and Terminer held for the

VERGE of the COURT.

Lex vitiorum emendatrix, virtutum commendatrix eſt.

YOU are to know, and conſider well, the duty and ſervice to which you are called, and whereupon you are by your oath charged. It is the happy eſtate and condition of the ſubject of this realm of England, that he is not to be impeached in his life, lands, or goods, by flying rumours, or wandering fames and reports, or ſecret and privy inquiſitions; but by the oath and preſentment of men of honeſt condition, in the face of juſtice. But this happy eſtate of the ſubject will turn to hurt and inconvenience, if thoſe that hold that part which you are now to perform, ſhall be negligent and remiſs in doing their duty; for as of two evils it were better mens doings were looked into over-ſtrictly and ſeverely, than that there ſhould be a notorious impunity of malefactors; as was well and wiſely ſaid of ancient time, "a man were better live where nothing is lawful, "than where all things are lawful." This therefore reſts in your care and conſcience, foraſmuch as at you juſtice begins, and the law cannot purſue and chaſe offenders to their deſerved fall, except you firſt put them up and diſcover them, whereby they may be brought to anſwer; for your verdict is not concluding to condemn, but it is neceſſary to charge, and without it the court cannot proceed to condemn.

Conſidering therefore that ye are the eye of juſtice, ye ought to be ſingle, without partial affection; watchful, not aſleep, or falſe aſleep in winking at offenders, and ſharp-ſighted to proceed with underſtanding and diſcretion: for in a word, if you ſhall not preſent unto the court all ſuch offences, as ſhall appear unto you either by evidence given in, or otherwiſe (mark what I ſay) of your own knowledge, which have been committed within the verge, which is as it were the limits of your ſurvey, but ſhall ſmother and conceal any offence willingly, then the guiltineſs of others will cleave to your conſciences, before God; and beſides, you are anſwerable in ſome degree to the King and his law, for ſuch your default and ſuppreſſion; and therefore take good regard unto it, you are to ſerve the King and his people, you are to keep and obſerve your oath, you are to acquit yourſelves.

But there is yet more cauſe why you ſhould take more ſpecial regard to your preſentments, than any other grand juries within the counties of this kingdom at large: for as it is a nearer degree and approach unto the King, which is the fountain of juſtice and government, to be the King's ſervant, than to be the King's ſubject; ſo this commiſſion ordained for the King's ſervants and houſhold, ought in the execution of juſtice to be exemplary unto other places. David ſaith (who was a King) "The wicked man ſhall not abide in my houſe;" as taking knowledge that it was impoſſible for Kings to extend their care, to baniſh wickedneſs over all their land or empire; but yet at leaſt they ought to undertake to God for their houſe.

We ſee further, that the law doth ſo eſteem the dignity of the King's ſettled manſion-houſe, as it hath laid unto it a plot of twelve miles round, which we call the verge, to be ſubject to a ſpecial and exempted juriſdiction depending upon his perſon and great officers. This is as a half-pace, or carpet ſpread about the

King's

King's chair of eſtate, which therefore ought to be cleared and voided more than other places of the kingdom; for if offences ſhall be ſhrouded under the King's wings, what hope is there of diſcipline and good juſtice in more remote parts? We ſee the ſun, when it is at the brighteſt, there may be perhaps a bank of clouds in the north, or the weſt, or remote regions, but near his body few or none; for where the King cometh, there ſhould come peace and order, and an awe and reverence in mens hearts.

Articuli ſuper Chartas c. 3 13 R. 2. c 3. 33 H. 8. c. 12.

And this jurifdiction was in ancient time executed, and ſince by ſtatute ratified, by the lord ſteward with great ceremony, in the nature of a peculiar King's bench for the verge; for it was thought a kind of eclipſing to the King's honour, that where the King was, any juſtice ſhould be ſought but immediately from his own officers. But in reſpect that office was oft void, this commiſſion hath ſucceeded, which change I do not diſlike, for though it hath leſs ſtate, yet it hath more ſtrength legally: therefore I ſay, you that are a jury of the verge, ſhould lead and give a pattern unto others in the care and conſcience of your preſentments.

Concerning the particular points and articles whereof you ſhall enquire, I will help your memory and mine own with order; neither will I load you, or trouble myſelf with every branch of ſeveral offences, but ſtand upon thoſe that are principal and moſt in uſe: the offences therefore that you are to preſent are of four natures.

I. The firſt, ſuch as concern God and his church.
II. The ſecond, ſuch as concern the King and his ſtate.
III. The third, ſuch as concern the King's people, and are capital.
IV. The fourth, ſuch as concern the King's people, not capital.

God and his Church.

THE ſervice of almighty God, upon whoſe bleſſing the peace, ſafety, and good eſtate of King and kingdom doth depend, may be violated, and God diſhonoured in three manners, by profanation, by contempt, and by diviſion, or breach of unity.

Profanations. 1 E. 6. c. 1. et 1 El c. 2. 1 M. c. 3. 5 E. 6. c. 4. 13 E 1. Stat. of Winton.

Firſt, if any man hath depraved or abuſed in word or deed the bleſſed ſacrament, or diſturbed the preacher or congregation in the time of divine ſervice; or if any have maliciouſly ſtricken with weapon, or drawn weapon in any church or church-yard; or if any fair or market have been kept in any church-yard, theſe are profanations within the purview of ſeveral ſtatutes, and thoſe you are to preſent: for holy things, actions, times, and ſacred places, are to be preſerved in reverence and divine reſpect.

Contempts, viz Recuſancy.

For contempts of our church and ſervice, they are comprehended in that known name, which too many (if it pleaſed God) bear, recuſancy; which offence hath many branches and dependencies: the wife-recuſant, ſhe tempts; the church-papiſt, he feeds and relieves; the corrupt ſchoolmaſter, he ſoweth tares; the diſſembler, he comformeth and doth not communicate. Therefore if any perſon, man or woman, wife or ſole, above the age of ſixteen years, not having ſome lawful excuſe, have not repaired to church according to the ſeveral ſtatutes; the one, for the weekly, the other, for the monthly repair, you are to preſent both the offence and the time how long. Again, ſuch as maintain, relieve, keep in ſervice of livery recuſants, though themſelves be none, you are likewiſe to preſent; for theſe be like the roots of nettles, which ſting not themſelves, but bear and maintain the ſtinging leaves: ſo of any that keepeth a ſchoolmaſter that comes not to church, or is not allowed by the biſhop, for that infection may ſpread far: ſo ſuch recuſants as have been convicted and conformed, and have not received the ſacrament once a year, for that is the touch-ſtone of their true converſion: and of theſe offences of recuſancy take you ſpecial regard. Twelve miles from court is no region for ſuch ſubjects. In the name of God, why ſhould not twelve miles about the King's chair be as free from papiſt-recuſants, as twelve miles from the city of Rome (the Pope's chair) is from proteſtants? There be hypocrites and atheiſts, and ſo I fear there be amongſt us; but no open contempt of their religion is endured. If there muſt be recuſants, it were better they lurked in the country, than here in the boſom of the kingdom.

Breach of unity.

For matter of diviſion and breach of unity, it is not without a myſtery that Chriſt's coat had no ſeam, nor no more ſhould the church if it were poſſible. Therefore if any miniſter refuſe to uſe the book of common-prayer, or wilfully ſwerveth

in

in divine ſervice from that book; or if any perſon whatſoever do ſcandalize that book, and ſpeak openly and maliciouſly in derogation of it; ſuch men do but make a rent in the garment, and ſuch are by you to be enquired of. But much more, ſuch as are not only differing, but in a ſort oppoſite unto it, by uſing a ſuperſtitious and corrupted form of divine ſervice; I mean, ſuch as ſay or hear maſs.

Theſe offences which I have recited to you, are againſt the ſervice and worſhip of God: there remain two which likewiſe pertain to the diſhonour of God; the one, is the abuſe of his name by perjury; the other, is the adhering to God's declared enemies, evil and out-caſt ſpirits, by conjuration and witchcraft.

Perjury. For perjury, it is hard to ſay whether it be more odious to God, or pernicious to man; for an oath, ſaith the apoſtle, is the end of controverſies: if therefore that boundary of ſuits be taken away or miſ-ſet, where ſhall be the end? Therefore you are to enquire of wilful and corrupt perjury in any of the King's courts, yea of court-barons and the like, and that as well of the actors, as of the procurer and ſuborner.

Conjuration and witchcraft. 1 *Jac. cap.* 1, 2. For witchcraft, by the former law it was not death, except it were actual and groſs invocation of evil ſpirits, or making covenant with them, or taking away life by witchcraft: but now by an act in his Majeſty's times, charms and ſorceries in certain caſes of procuring of unlawful love or bodily hurt, and ſome others, are made felony the ſecond offence; the firſt being impriſonment and pillory.

Supremacy placed with offences of ſtate. And here I do conclude my firſt part concerning religion and eccleſiaſtical cauſes; wherein it may be thought that I do forget matters of ſupremacy, or of Jeſuits, and ſeminaries, and the like, which are uſually ſorted with cauſes of religion: but I muſt have leave to direct myſelf according to mine own perſuaſion, which is, that, whatſoever hath been ſaid or written on the other ſide, all the late ſtatutes, which inflict capital puniſhment upon extollers of the Pope's ſupremacy, deniers of the King's ſupremacy, Jeſuits and ſeminaries, and other offenders of that nature, have for their principal ſcope, not the puniſhment of the error of conſcience, but the repreſſing of the peril of the eſtate. This is the true ſpirit of theſe laws, and therefore I will place them under my ſecond diviſion, which is of offences that concern the King and his eſtate, to which now I come.

The King and the ſtate. These offences therefore reſpect either the ſafety of the King's perſon, or the ſafety of his eſtate and kingdom, which though they cannot be diſſever'd in deed, yet they may be diſtinguiſhed in ſpeech.

The King's perſon. Firſt then, if any have conſpired againſt the life of the King, which God have in his cuſtody! or of the Queen's Majeſty, or of the moſt noble Prince their eldeſt ſon; the very compaſſing and inward imagination thereof is high treaſon, if it can be proved by any fact that is overt: for in the caſe of ſo ſudden, dark, and pernicious, and peremptory attempts, it were too late for the law to take a blow before it gives; and this high treaſon of all other is moſt heinous, of which you ſhall enquire, though I hope there be no cauſe.

Privy council. There is another capital offence that hath an affinity with this, whereof you here within the verge are moſt properly to enquire; the King's privy council are as the principal watch over the ſafety of the King, ſo as their ſafety is a portion of his: if therefore any of the King's ſervants within his cheque-roll (for to them only the law extends) have conſpired the death of any the King's privy council, this is felony, and thereof you ſhall enquire.

Repreſentation of his perſon. And ſince we are now in that branch of the King's perſon, I will ſpeak alſo of the King's perſon by repreſentation, and the treaſons which touch the ſame.

The King's perſon and authority is repreſented in three things; in his ſeals, in his monies, and in his principal magiſtrates: if therefore any have counterfeited the King's great ſeal, privy ſeal, or ſeal manual; or counterfeited, clipped, or ſcaled his monies, or other monies current, this is high treaſon; ſo is it to kill certain great officers, or judges executing their office.

The eſtate. We will paſs now to thoſe treaſons which concern the ſafety of the King's eſtate, which are of three kinds, anſwering to three perils which may happen to an eſtate; theſe perils are, foreign invaſion, open rebellion and ſedition, and privy practice to alienate and eſtrange the hearts of the ſubjects, and

to prepare them either to adhere to enemies, or to burſt out into tumults and commotions of themſelves.

Invaſion and rebellion.

Therefore if any perſon have ſolicited or procured any invaſion from foreigners; or if any have combined to raiſe and ſtir the people to rebellion within the realm; theſe are high treaſons, tending to the overthrow of the eſtate of this commonwealth, and to be enquired of.

Alienation of hearts.

The third part of practice hath divers branches, but one principal root in theſe our times, which is the vaſt and over-ſpreading ambition and uſurpation of the ſee of Rome: for the Pope of Rome is, according to his late challenges and pretences, become a competitor and corrival with the King, for the hearts and obediences of the King's ſubjects: He ſtands for it, he ſends over his love-tokens and brokers (under colour of conſcience) to ſteal and win away the hearts and allegiances of the people, and to make them as fuel ready to take fire upon any his commandments. This is that yoke which this kingdom hath happily caſt off, even at ſuch time when the popiſh religion was nevertheleſs continued, and that divers ſtates, which are the Pope's vaſſals, do likewiſe begin to ſhake off.

Supremacy, treaſon, *etc.* 5 *Eliz. cap.* 1. Jeſuits. 3 *Jac. cap.* 4. *et* 5.

If therefore any perſon have maintained and extolled the uſurped authority of the biſhop of Rome within the King's dominions, by writing, preaching, or deed, adviſedly, directly and maliciouſly; or if any perſon have publiſhed or put in ure any of the Pope's bulls or inſtruments of abſolution; or if any perſon have withdrawn, and reconciled, any of the King's ſubjects from their obedience, or been withdrawn and reconciled; or if any ſubject have refuſed the ſecond time to take the oath of ſupremacy lawfully tendred; or if any Jeſuit or ſeminary come and abide within this realm; theſe are by ſeveral ſtatutes made caſes of high treaſon, the law accounting theſe things as preparatives, and the firſt wheels and ſecret motions of ſeditions and revolts from the King's obedience. Of theſe you are to enquire, both of the actors and of their abettors, comforters, receivers, maintainers; and concealers, which in ſome caſes are traitors, as well as the principal, in ſome caſes in *praemunire*, in ſome other, in miſpriſion of treaſon (which I will not ſtand to diſtinguiſh) and in ſome other, felony; as namely, that of the receiving and relieving of Jeſuits and prieſts; the bringing in and diſperſing of *Agnus Dei's*, croſſes, pictures, or ſuch traſh, is likewiſe *praemunire*; and ſo is the denial to take the oath of ſupremacy the firſt time.

28 *El. cap.* 1.

13 *El. cap.* 2.
23 *El. cap.* 1.

Agnus Dei's.

Military men.

And becauſe in the diſpoſition of a ſtate to troubles and perturbations, military men are moſt tickle and dangerous; therefore if any of the King's ſubjects go over to ſerve in foreign parts, and do not firſt endure the touch, that is, take the oath of allegiance; or if he have born office in any army, and do not enter into bond with ſureties as is preſcribed, this is made felony; and ſuch as you ſhall enquire.

Prophecies.

Laſtly, becauſe the vulgar people are ſometimes led with vain and fond prophecies; if any ſuch ſhall be publiſhed, to the end to move ſtirs or tumults, this is not felony, but puniſhed by a year's impriſonment and loſs of goods: and of this alſo ſhall you enquire.

You ſhall likewiſe underſtand that the eſcape of any priſoner committed for treaſon, is treaſon; whereof you are likewiſe to enquire.

The people, capital.

Now come I to the third part of my diviſion; that is, thoſe offences which concern the King's people, and are capital; which nevertheleſs the law terms offences againſt the crown, in reſpect of the protection that the King hath of his people, and the intereſt he hath in them and their welfare; for touch them, touch the King. Theſe offences are of three natures: the firſt concerneth the conſervation of their lives; the ſecond, of honour and honeſty of their perſons and families; and the third, of their ſubſtance.

Life.

Firſt for life. I muſt ſay unto you in general, that life is grown too cheap in theſe times, it is ſet at the price of words, and every petty ſcorn and diſgrace can have no other reparation; nay ſo many mens lives are taken away with impunity, that the very life of the law is almoſt taken away, which is the execution; and therefore though we cannot reſtore the life of thoſe men that are ſlain, yet I pray let us reſtore the law to her life, by proceeding with due ſe-

verity againſt the offenders; and moſt eſpecially this plot of ground (which, as I ſaid, is the King's carpet) ought not to be ſtained with blood, crying in the ears of God and the King. It is true nevertheleſs, that the law doth make divers juſt differences of life taken away; but yet no ſuch differences as the wanton humours and braveries of men have under a reverend name of honour and reputation invented.

The higheſt degree is where ſuch a one is killed, unto whom the offender did bear faith and obedience; as the ſervant to the maſter, the wife to the huſband, the clerk to the prelate; and I ſhall ever add (for ſo I conceive of the law) the child to the father or the mother; and this the law terms petty treaſon.

The ſecond is, Where a man is ſlain upon fore-thought malice, which the law terms murther; and it is an offence horrible and odious, and cannot be blanched, nor made fair, but foul.

The third is, Where a man is killed upon a ſudden heat or affray, whereunto the law gives ſome little favour, becauſe a man in fury is not himſelf, *ira furor brevis*, wrath is a ſhort madneſs; and the wiſdom of law in his Majeſty's time hath made a ſub-diviſion of the ſtab given, where the party ſtabbed is out of defence, and had not given the firſt blow, from other manſlaughters. 1 *Jac. cap.* 8.

The fourth degree is, That of killing a man in the party's own defence, or by miſadventure, which though they be not felonies, yet nevertheleſs the law doth not ſuffer them to go unpuniſhed; becauſe it doth diſcern ſome ſparks of a bloody mind in the one, and of careleſſneſs in the other.

And the fifth is, Where the law doth admit a kind of juſtification, not by plea, for a man may not (that hath ſhed blood) affront the law with pleading not guilty; but when the caſe is found by verdict, being diſcloſed upon the evidence; as where a man in the King's highway and peace is aſſailed to be murthered or robbed; or when a man defending his houſe, which is his caſtle, againſt unlawful violence; or when a ſheriff or miniſter of juſtice is reſiſted in the execution of his office; or when the patient dieth in the chirurgeon's hands, upon cutting or otherwiſe; for theſe caſes the law doth privilege, becauſe of the neceſſity, and becauſe of the innocency of the intention.

Thus much for the death of man, of which caſes you are to enquire; together with the acceſſories before and after the fact.

For the ſecond kind, which concerns the honour and chaſtneſs of perſons and families; you are to enquire of the raviſhment of women, of the taking of women out of the poſſeſſion of their parents or guardians againſt their will, or marrying them, or abuſing them; of double marriages, where there was not firſt ſeven years abſence, and no notice that the party ſo abſent was alive, and other felonies againſt the honeſty of life. Honeſty of life. 1 *Jac. cap.* 11.

For the third kind, which concerneth mens ſubſtance, you ſhall enquire of burglaries, robberies, cutting of purſes, and taking of any thing from the perſon; and generally other ſtealths, as well ſuch as are plain, as thoſe that are diſguiſed, whereof I will by and by ſpeak: but firſt I muſt require you to uſe diligence in preſenting eſpecially thoſe purloinings and imbezlements, which are of plate, veſſel, or whatſoever within the King's houſe. The King's houſe is an open place; it ought to be kept ſafe by law, and not by lock, and therefore needeth the more ſeverity. Subſtance.

Now for coloured and diſguiſed robberies; I will name two or three of them: the purveyor that takes without warrant, is no better than a thief, and it is felony. The ſervant that hath the keeping of his Majeſty's goods, and going away with them, though he came to the poſſeſſion of them lawfully, it is felony. Of theſe you ſhall likewiſe enquire, principals and acceſſories. The voluntary eſcape of a felon is alſo felony. 28 E. 1. *Articuli ſuper chartas*, c. 2. 31 El. c. 4. 33 H. 6. c. 1. 21 H. 8. c. 7.

For the laſt part, which is of offences concerning the people not capital, they are many: but I will ſelect only ſuch as I think fitteſt to be remembered unto you, ſtill dividing, to give you the better light. They are of four natures. The people, not capital.

1. The firſt, is matter of force and outrage,
2. The ſecond, matter of fraud and deceit,
3. Publick nuſances and grievances.

4. The

4. The fourth, breach and inobſervance of certain wholeſome and politick laws for government.

Force. For the firſt, you ſhall enquire of riots and unlawful aſſemblies, of forcible entries, and detainers with force; and properly of all aſſaults of ſtriking, drawing weapon or other violence within the King's houſe, and the precincts thereof: for the King's houſe, from whence example of peace ſhould flow unto the farthеſt parts of the kingdom, as the ointment of Aaron's head to the ſkirts of his garment, ought to be ſacred and inviolate from force and brawls, as well in reſpect of reverence to the place, as in reſpect of danger of greater tumult, and of ill example to the whole kingdom; and therefore in that place all ſhould be full of peace, order, regard, forbearance, and ſilence.

Beſides open force, there is a kind of force that cometh with an armed hand, but diſguiſed, that is no leſs hateful and hurtful; and that is, abuſe and oppreſſion by authority. And therefore you ſhall enquire of all extortions in officers and miniſters; as ſheriffs, bailiffs of hundreds, eſcheators, coroners, conſtables, ordinaries, and others, who by colour of office do poll the people.

For frauds and deceits, I do chiefly commend to your care the frauds and deceits in that which is the chief means of all juſt contract and permutation, which is, weights and meaſures; wherein, although God hath pronounced that a falſe weight is an abomination, yet the abuſe is ſo common and ſo general, I mean of weights (and I ſpeak upon knowledge and late examination) that if one were to build a church, he ſhould need but falſe weights, and not ſeek them far, of the piles of braſs to make the bells, and the weights of lead to make the battlements: and herein you are to make ſpecial enquiry, whether the clerk of the market within the verge, to whom properly it appertains, hath done his duty.

Nuſance. For nuſances and grievances, I will for the preſent only ſingle out one, that ye preſent the decays of highways and bridges; for where the Majeſty of a King's houſe draws recourſe and acceſs, it is both diſgraceful to the King, and diſeaſeful to the people, if the ways near-abouts be not fair and good; wherein it is ſtrange to ſee the chargeable pavements and cauſways in the avenues and entrances of towns abroad beyond the ſeas; whereas London, the ſecond city at the leaſt of Europe, in glory, in greatneſs, and in wealth, cannot be diſcerned by the fairneſs of the ways, though a little perhaps by the broadneſs of them, from a village.

Breach of ſtatutes. For the laſt part (becauſe I paſs theſe things over briefly) I will make mention unto you of three laws.

1. The one, concerning the King's pleaſure.
2. The ſecond, concerning the people's food.
3. And the third, concerning wares and manufactures.

King's pleaſure. You ſhall therefore enquire of the unlawful taking partridges and pheaſants or fowl, the deſtruction of the eggs of the wild-fowl, the killing of hares or deer, and the ſelling of veniſon or hares: for that which is for exerciſe and ſport and courteſy ſhould not be turned to gluttony and ſale victual.

Food. You ſhall alſo enquire whether bakers and brewers keep their aſſize, and whether as well they as butchers, innholders and victuallers, do ſell that which is wholeſome, and at reaſonable prices, and whether they do link and combine to raiſe prices.

Manufactures. Laſtly, you ſhall enquire whether the good ſtatute be obſerved, whereby a man may have that he thinketh he hath, and not be abuſed or miſ-ſerved in that he buys: I mean that ſtatute that requireth that none uſe any manual occupation but ſuch as have been ſeven years apprentice to it; which law being generally tranſgreſſed, makes the people buy in effect chaff for corn; for that which is miſ-wrought will miſ-wear.

5 Eliz. c. 4.

There be many more things enquirable by you throughout all the former parts, which it were over-long in particular to recite. You may be ſupplied either out of your own experience, or out of ſuch bills and informations as ſhall be brought unto you, or upon any queſtion that you ſhall demand of the court, which will be ready to give you any farther direction as far as is fit: but theſe which I have gone through, are the principal points of your charge; which to preſent, you have taken the name of God to witneſs; and in the name of God perform it.

CHARGE

DELIVERED BY

Sir FRANCIS BACON, Knight,

The KING's Solicitor-General,

AT

The Arraignment of the Lord SANQUHAR,

In the King's Bench at Weſtminſter.

THE ARGUMENT.

The Lord Sanquhar, a Scotch nobleman, having, in private revenge, ſuborned Robert Carlile to murther John Turner, maſter of fence, thought, by his greatneſs, to have born it out; but the King, reſpecting nothing ſo much as juſtice, would not ſuffer nobility to be a ſhelter for villainy; but, according to law, on the 29th of June 1612, the ſaid Lord Sanquhar, having been arraigned and condemned, by the name of Robert Creighton, Eſq; was before Weſtminſter-hall Gate executed, where he died very penitent. At whoſe arraignment my Lord Bacon (then Solicitor-General to King James) made this ſpeech following:

IN this cauſe of life and death, the jury's part is in effect diſcharged; for after a frank and formal confeſſion, their labour is at an end: ſo that what hath been ſaid by Mr. Attorney, or ſhall be ſaid by myſelf, is rather convenient than neceſſary.

My lord Sanquhar, your fault is great, and cannot be extenuated, and it need not be aggravated; and if it needed, you have made ſo full an anatomy of it out of your own feeling, as it cannot be matched by myſelf, or any man elſe, out of conceit; ſo as that part of aggravation I leave. Nay, more, this chriſtian and penitent courſe of yours draws me thus far, that I will agree, in ſome ſort extenuates it: for certainly, as even in extreme evils there are degrees; ſo this particular of your offence is ſuch, as though it be foul ſpilling of blood, yet there are more foul: for if you had ſought to take away a man's life for his vineyard, as Achab did; or for envy, as Cain did; or to poſſeſs his bed, as David did; ſurely the murther had been more odious.

Your temptation was revenge, which the more natural it is to man, the more have laws both divine and human ſought to repreſs it; *Mihi vindicta*. But in one thing you and I ſhall never agree, that generous ſpirits (you ſay) are hard to forgive: no, contrariwiſe, generous and magnanimous minds are readieſt to forgive; and it is a weakneſs and impotency of mind to be unable to forgive;

Corpora magnanimo ſatis eſt proſtraſſe leoni.

But howſoever murthers may ariſe from ſeveral motives, leſs or more odious, yet the law both of God and man involves them in one degree, and therefore you may read that in Joab's caſe, which was a murther upon revenge, and matcheth with your caſe; he for a dear brother, and you for a dear part of your own body; yet there was a ſevere charge given, it ſhould not be unpuniſhed.

And certainly the circumſtance of time is heavy upon you: it is now five years ſince this unfortunate man Turner, be it upon accident, or be it upon deſpight, gave the provocation, which was the ſeed of your malice. All paſſions are ſuaged with time: love, hatred, grief; all fire itſelf burns out with time, if no new fuel be put to it. Therefore for you to have been in the gall of bitterneſs ſo long, and to have been in a reſtleſs chace of this blood ſo many years, is a ſtrange example; and I muſt tell you plainly, that I conceive you have ſucked thoſe af-

fections of dwelling in malice, rather out of Italy, and outlandiſh manners, where you have converſed, than out of any part of this iſland, England or Scotland.

But that which is fitteſt for me to ſpend time in (the matter being confeſſed) is to ſet forth and magnify to the hearers the juſtice of this day; firſt of God, and then of the King.

My lord, you have friends and entertainments in foreign parts; it had been an eaſy thing for you to ſet Carlile, or ſome other bloodhound on work, when your perſon had been beyond the ſeas; and ſo this news might have come to you in a packet, and you might have looked on how the ſtorm would paſs: but God bereaved you of this foreſight, and cloſed you here under the hand of a King, that though abundant in clemency, yet is no leſs zealous of juſtice.

Again, when you came in at Lambeth, you might have perſiſted in the denial of the procurement of the fact; Carlile, a reſolute man, might perhaps have cleared you (for they that are reſolute in miſchief, are commonly obſtinate in concealing the procurers) and ſo nothing ſhould have been againſt you but preſumption. But then alſo God, to take away all obſtruction of juſtice, gave you the grace (which ought indeed to be more true comfort to you, than any device whereby you might have eſcaped) to make a clear and plain confeſſion.

Other impediments there were (not a few) which might have been an interruption to this day's juſtice, had not God in his providence removed them.

But, now that I have given God the honour, let me give it likewiſe where it is next due, which is, to the King our ſovereign.

This murther was no ſooner committed, and brought to his Majeſty's ears, but his juſt indignation, wherewith he firſt was moved, caſt itſelf into a great deal of care and providence to have juſtice done. Firſt came forth his proclamation, ſomewhat of a rare form, and deviſed, and in effect dictated by his Majeſty himſelf; and by that he did proſecute the offenders, as it were with the breath and blaſt of his mouth. Then did his Majeſty ſtretch forth his long arms (for Kings have long arms when they will extend them) one of them to the ſea, where he took hold of Grey ſhipped for Sweden, who gave the firſt light of teſtimony; the other arm to Scotland, and took hold of Carlile, ere he was warm in his houſe, and brought him the length of his kingdom under ſuch ſafe watch and cuſtody, as he could have no means to eſcape, no nor to miſchief himſelf, no nor learn any leſſons to ſtand mute; in which caſes, perhaps, this day's juſtice might have received a ſtop. So that I may conclude his Majeſty hath ſhewed himſelf God's true lieutenant, and that he is no reſpecter of perſons; but the Engliſh, Scotiſh, nobleman, fencer, are to him alike in reſpect of juſtice.

Nay, I muſt ſay farther, that his Majeſty hath had, in this, a kind of prophetical ſpirit; for what time Carlile and Grey, and you, my lord, yourſelf, were fled no man knew whither, to the four winds, the King ever ſpake in a confident and undertaking manner, that whereſoever the offenders were in Europe, he would produce them forth to juſtice; of which noble word God hath made him maſter.

Laſtly, I will conclude towards you, my lord, that though your offence hath been great, yet your confeſſion hath been free, and your behaviour and ſpeech full of diſcretion; and this ſhews, that though you could not reſiſt the tempter, yet you bear a chriſtian and generous mind, anſwerable to the noble family of which you are deſcended. This I commend unto you, and take it to be an aſſured token of God's mercy and favour, in reſpect whereof all worldly things are but traſh; and ſo it is fit for you, as your ſtate now is, to account them. And this is all I will ſay for the preſent.

[N. B. The reader, for his fuller information in this ſtory of the lord Sanquhar, is deſired to peruſe the caſe in the ninth book of the lord Coke's Reports; at the end of which, the whole ſeries of the murder and trial is exactly related.]

THE

THE CHARGE OF Sir FRANCIS BACON, Knight, The KING's Attorney-General, TOUCHING DUELS. UPON An Information in the Star-Chamber againſt Prieſt and Wright.

With the DECREE of the Star-Chamber in the ſame Cauſe.

MY LORDS,

I Thought it fit for my place, and for theſe times, to bring to hearing before your lordſhips ſome cauſe touching private duels, to ſee if this court can do any good to tame and reclaim that evil which ſeems unbridled. And I could have wiſhed that I had met with ſome greater perſons, as a ſubject for your cenſure, both becauſe it had been more worthy of this preſence, and alſo the better to have ſhewed the reſolution myſelf hath to proceed without reſpect of perſons in this buſineſs: but finding this cauſe on foot in my predeceſſor's time, and publiſhed and ready for hearing, I thought to loſe no time in a miſchief that groweth every day: and beſides, it paſſes not amiſs ſometimes in government, that the greater ſort be admoniſhed by an example made in the meaner, and the dog to be beaten before the lion. Nay, I ſhould think, my lords, that men of birth and quality will leave the practice when it begins to be vilified, and come ſo low as to barber-ſurgeons and butchers, and ſuch baſe mechanical perſons.

And for the greatneſs of this preſence, in which I take much comfort, both as I conſider it in itſelf, and much more in reſpect it is by his Majeſty's direction, I will ſupply the meanneſs of the particular cauſe by handling of the general point: to the end, that by occaſion of this preſent cauſe, both my purpoſe of proſecution againſt duels, and the opinion of the court (without which I am nothing) for the cenſure of them, may appear, and thereby offenders in that kind may read their own caſe, and know what they are to expect; which may ſerve for a warning until example may be made in ſome greater perſon: which I doubt the times will but too ſoon afford.

Therefore before I come to the particular, whereof your lordſhips are now to judge, I think it time beſt ſpent to ſpeak ſomewhat,

Firſt, Of the nature and greatneſs of this miſchief.

Secondly, Of the cauſes and remedies.

Thirdly, Of the juſtice of the law of England, which ſome ſtick not to think defective in this matter.

Fourthly, Of the capacity of this court, where certainly the remedy of this miſchief is beſt to be found.

And fifthly, Touching mine own purpoſe and reſolution, wherein I ſhall humbly crave your lordſhips aid and aſſiſtance.

For the miſchief itſelf, it may pleaſe your lordſhips to take into your conſideration that when revenge is once extorted out of the magiſtrates hands, contrary to God's ordinance, *Mihi vindicta, ego retribuam*, and every man ſhall bear the ſword, not to defend, but to aſſail; and private men begin once to preſume to give law to themſelves, and to right their own wrongs, no man can foreſee the

dangers and inconveniences that may ariſe and multiply thereupon. It may cauſe ſudden ſtorms in court, to the diſturbance of his Majeſty, and unſafety of his perſon: it may grow from quarrels to bandying, and from bandying to trooping, and ſo to tumult and commotion; from particular perſons to diſſenſion of families and alliances; yea, to national quarrels, according to the infinite variety of accidents, which fall not under foreſight: ſo that the ſtate by this means ſhall be like to a diſtempered and imperfect body, continually ſubject to inflammations and convulſions.

Beſides, certainly, both in divinity and in policy, offences of preſumption are the greateſt. Other offences yield and conſent to the law that it is good, not daring to make defence, or to juſtify themſelves; but this offence expreſsly gives the law an affront, as if there were two laws, one a kind of gown-law, and the other a law of reputation, as they term it; ſo that Paul's and Weſtminſter, the pulpit and the courts of juſtice, muſt give place to the law (as the King ſpeaketh in his proclamation) of ordinary tables, and ſuch reverend aſſemblies: the year-books and ſtatute-books muſt give place to ſome French and Italian pamphlets, which handle the doctrine of duels, which if they be in the right, *tranſeamus ad illa*, let us receive them, and not keep the people in conflict and diſtraction between two laws.

Again, my lords, it is a miſerable effect, when young men full of towardneſs and hope, ſuch as the poets call *aurorae filii*, ſons of the morning, in whom the expectation and comfort of their friends conſiſteth, ſhall be caſt away and deſtroyed in ſuch a vain manner; but much more it is to be deplored when ſo much noble and genteel blood ſhall be ſpilt upon ſuch follies, as, if it were adventured in the field in ſervice of the King and realm, were able to make the fortune of a day, and to change the fortune of a kingdom. So as your lordſhips ſee what a deſperate evil this is; it troubleth peace, it diſ-furniſheth war, it bringeth calamity upon private men, peril upon the ſtate, and contempt upon the law.

Touching the cauſes of it; the firſt motive, no doubt, is a falſe and erroneous imagination of honour and credit; and therefore the King, in his laſt proclamation, doth moſt aptly and excellently call them bewitching duels. For, if one judge of it truly, it is no better than a ſorcery that enchanteth the ſpirits of young men, that bear great minds with a falſe ſhew, *ſpecies falſa*; and a kind of ſatanical illuſion and apparition of honour againſt religion, againſt law, againſt moral virtue, and againſt the precedents and examples of the beſt times and valianteſt nations; as I ſhall tell you by and by, when I ſhall ſhew you that the law of England is not alone in this point.

But then the ſeed of this miſchief being ſuch, it is nouriſhed by vain diſcourſes, and green and unripe conceits, which nevertheleſs have ſo prevailed, as though a man were ſtaid and ſober-minded, and a right believer touching the vanity and unlawfulneſs of theſe duels; yet the ſtream of vulgar opinion is ſuch, as it impoſeth a neceſſity upon men of value to conform themſelves, or elſe there is no living or looking upon mens faces: ſo that we have not to do, in this caſe, ſo much with particular perſons, as with unſound and depraved opinions, like the dominations and ſpirits of the air which the Scripture ſpeaketh of.

Hereunto may be added, that men have almoſt loſt the true notion and underſtanding of fortitude and valour. For fortitude diſtinguiſheth of the grounds of quarrels whether they be juſt; and not only ſo, but whether they be worthy; and ſetteth a better price upon mens lives than to beſtow them idly: nay, it is weakneſs and diſ-eſteem of a man's ſelf, to put a man's life upon ſuch ledger performances: a man's life is not to be trifled away; it is to be offered up and ſacrificed to honourable ſervices, publick merits, good cauſes, and noble adventures. It is in expence of blood as it is in expence of money; it is no liberality to make a profuſion of money upon every vain occaſion, nor no more it is fortitude to make effuſion of blood, except the cauſe be of worth. And thus much for the cauſes of this evil.

For the remedies, I hope ſome great and noble perſon will put his hand to this plough, and I wiſh that my labours of this day may be but fore-runners to the work of a higher and better hand. But yet to deliver my opinion as may be

proper

proper for this time and place, there be four things that I have thought on, as the moſt effectual for the repreſſing of this depraved cuſtom of particular combats.

The firſt is, that there do appear and be declared a conſtant and ſettled reſolution in the ſtate to aboliſh it. For this is a thing, my lords, muſt go down at once, or not at all; for then every particular man will think himſelf acquitted in his reputation, when he ſees that the ſtate takes it to heart, as an inſult againſt the King's power and authority, and thereupon hath abſolutely reſolved to maſter it; like unto that which was ſet down in expreſs words in the edict of Charles IX. of France touching duels, that the King himſelf took upon him the honour of all that took themſelves grieved or intereſſed for not having performed the combat. So muſt the ſtate do in this buſineſs; and in my conſcience there is none that is but of a reaſonable ſober diſpoſition, be he never ſo valiant (except it be ſome furious perſon that is like a firework) but will be glad of it, when he ſhall ſee the law and rule of ſtate diſintereſt him of a vain and unneceſſary hazard.

Secondly, Care muſt be taken that this evil be no more cockered, nor the humour of it fed; wherein I humbly pray your lordſhips that I may ſpeak my mind freely, and yet be underſtood aright. The proceedings of the great and noble commiſſioners martial I honour and reverence much, and of them I ſpeak not in any ſort; but I ſay the compounding of quarrels, which is otherwiſe in uſe by private noblemen and gentlemen, it is ſo punctual, and hath ſuch reference and reſpect unto the received conceits, what's before-hand, and what's behind-hand, and I cannot tell what, as without all queſtion it doth, in a faſhion, countenance and authorize this practice of duels, as if it had in it ſomewhat of right.

Thirdly, I muſt acknowledge that I learned out of the King's laſt proclamation, the moſt prudent and beſt applied remedy for this offence (if it ſhall pleaſe his Majeſty to uſe it) that the wit of man can deviſe. This offence, my lords, is grounded upon a falſe conceit of honour, and therefore it would be puniſhed in the ſame kind, *in eo quis rectiſſime plectitur, in quo peccat*. The fountain of honour is the King and his aſpect, and the acceſs to his perſon continueth honour in life, and to be baniſhed from his preſence is one of the greateſt eclipſes of honour that can be; if his Majeſty ſhall be pleaſed that when this court ſhall cenſure any of theſe offences in perſons of eminent quality, to add this out of his own power and diſcipline, that theſe perſons ſhall be baniſhed and excluded from his court for certain years, and the courts of his Queen and Prince, I think there is no man that hath any good blood in him will commit an act that ſhall caſt him into that darkneſs, that he may not behold his ſovereign's face.

Laſtly, And that which more properly concerneth this court: we ſee, my lords, the root of this offence is ſtubborn; for it deſpiſeth death, which is the utmoſt of puniſhments; and it were a juſt, but a miſerable ſeverity, to execute the law without all remiſſion or mercy, where the caſe proveth capital. And yet the late ſeverity in France was more, where, by a kind of martial law, eſtabliſhed by ordinance of the King and parliament, the party that had ſlain another was preſently had to the gibbet, inſomuch as gentlemen of great quality were hanged, their wounds bleeding, leſt a natural death ſhould prevent the example of juſtice. But, my lords, the courſe which we ſhall take is of far greater lenity, and yet of no leſs efficacy; which is to puniſh, in this court, all the middle acts and proceedings which tend to the duel (which I will enumerate to you anon) and ſo to hew and vex the root in the branches, which, no doubt, in the end will kill the root, and yet prevent the extremity of law.

Now for the law of England, I ſee it excepted to, though ignorantly, in two points:

The one, That it ſhould make no difference between an inſidious and foul murther, and the killing of a man upon fair terms, as they now call it.

The other, That the law hath not provided ſufficient puniſhment, and reparations, for contumely of words, as the lye, and the like.

But theſe are no better than childiſh novelties againſt the divine law, and againſt all laws in effect, and againſt the examples of all the braveſt and moſt virtuous nations of the world.

For firſt, for the law of God, there is never to be found any difference made in homicide, but between homicide voluntary, and involuntary, which we term miſadventure. And for the caſe of miſadventure itſelf, there were cities of refuge; ſo that the offender was put to his flight, and that flight was ſubject to accident, whether the revenger of blood ſhould overtake him before he had gotten ſanctuary or no. It is true that our law hath made a more ſubtle diſtinction between the will inflamed and the will adviſed, between manſlaughter in heat, and murther upon prepenſed malice or cold blood, as the ſoldiers call it, an indulgence not unfit for a cholerick and warlike nation; for it is true, *ira furor brevis*; a man in fury is not himſelf. This privilege of paſſion the ancient Roman law reſtrained, but to a caſe: that was, if the huſband took the adulterer in the manner; to that rage and provocation only it gave way, that an homicide was juſtifiable. But for a difference to be made in caſe of killing and deſtroying man, upon a fore-thought purpoſe, between foul and fair, and as it were between ſingle murder and vyed murder, it is but a monſtrous child of this latter age, and there is no ſhadow of it in any law divine or human. Only it is true, I find in the Scripture that Cain inticed his brother into the field and ſlew him treacherouſly; but Lamech vaunted of his manhood, that he would kill a young man, and if it were to his hurt: ſo as I ſee no difference between an inſidious murder, and a braving or preſumptuous murder, but the difference between Cain and Lamech.

As for examples in civil ſtates, all memory doth conſent, that Græcia and Rome were the moſt valiant and generous nations of the world; and, that which is more to be noted, they were free eſtates, and not under a monarchy; whereby a man would think it a great deal the more reaſon that particular perſons ſhould have righted themſelves; and yet they had not this practice of duels, nor any thing that bare ſhew thereof: and ſure they would have had it, if there had been any virtue in it. Nay, as he ſaith, *Fas eſt et ab hoſte doceri.* It is memorable, that is reported, by a counſellor ambaſſador of the emperor's, touching the cenſure of the Turks of theſe duels: there was a combat of this kind performed by two perſons of quality of the Turks, wherein one of them was ſlain, the other party was convented before the council of baſhaws; the manner of the reprehenſion was in theſe words: "How durſt you undertake to fight one "with the other? Are there not Chriſtians enough to kill? Did you not know "that whether of you ſhould be ſlain, the loſs would be the Great Seignior's?" So as we may ſee that the moſt warlike nations, whether generous or barbarous, have ever deſpiſed this wherein now men glory.

It is true, my lords, that I find combats of two natures authorized, how juſtly I will not diſpute as to the latter of them.

The one, when upon the approaches of armies in the face one of the other, particular perſons have made challenges for trial of valours in the field upon the publick quarrel.

This the Romans called *Pugna per provocationem.* And this was never, but either between the generals themſelves, who were abſolute, or between particulars by licence of the generals; never upon private authority. So you ſee David aſked leave when he fought with Goliah; and Joab, when the armies were met, gave leave, and ſaid, "Let the young men play before us." And of this kind was that famous example in the wars of Naples, between twelve Spaniards, and twelve Italians, where the Italians bare away the victory; beſides other infinite like examples worthy and laudable, ſometimes by ſingles, ſometimes by numbers.

The ſecond combat is a judicial trial of right, where the right is obſcure, introduced by the Goths and the Northern nations, but more anciently entertained in Spain; and this yet remains in ſome caſes as a divine lot of battle, though controverted by divines, touching the lawfulneſs of it: ſo that a wiſe writer ſaith, *Taliter pugnantes videntur tentare Deum, quia hoc volunt ut Deus oſtendat et faciat miraculum, ut juſtam cauſam habens victor efficiatur, quod ſaepe contra accidit.* But howſoever it be, this kind of fight taketh its warrant from law. Nay, the French themſelves, whence this folly ſeemeth chiefly to have flown, never had it but only in practice and toleration, and never as authorized by law; and yet now

of late they have been fain to purge their folly with extreme rigour, in ſo much as many gentlemen left between death and life in the duels (as I ſpake before) were haſtened to hanging with their wounds bleeding. For the ſtate found it had been neglected ſo long, as nothing could be thought cruelty which tended to the putting of it down.

As for the ſecond defect pretended in our law, that it hath provided no remedy for lyes and fillips, it may receive like anſwer. It would have been thought a madneſs amongſt the ancient law-givers, to have ſet a puniſhment upon the lye given, which in effect is but a word of denial, a negative of another's ſaying. Any law-giver, if he had been aſked the queſtion, would have made Solon's anſwer: That he had not ordained any puniſhment for it, becauſe he never imagined the world would have been ſo fantaſtical as to take it ſo highly. The civilians, they diſpute whether an action of injury lie for it, and rather reſolve the contrary. And Francis the firſt of France, who firſt ſet on and ſtamped this diſgrace ſo deep, is taxed by the judgment of all wiſe writers for beginning the vanity of it; for it was he, that when he had himſelf given the lye and defy to the Emperor, to make it current in the world, ſaid in a ſolemn aſſembly, "That "he was no honeſt man that would bear the lye:" which was the fountain of this new learning.

As for words of reproach and contumely (whereof the lye was eſteemed none) it is not credible (but that the orations themſelves are extant) what extreme and exquiſite reproaches were toſſed up and down in the ſenate of Rome and the places of aſſembly, and the like in Græcia, and yet no man took himſelf fouled by them, but took them but for breath, and the ſtyle of an enemy, and either deſpiſed them or returned them, but no blood ſpilt about them.

So of every touch or light blow of the perſon, they are not in themſelves conſiderable, ſave that they have got upon them the ſtamp of a diſgrace, which maketh theſe light things paſs for great matter. The law of England, and all laws, hold theſe degrees of injury to the perſon, ſlander, battery, maim, and death; and if there be extraordinary circumſtances of deſpight and contumely, as in caſe of libels, and baſtinadoes, and the like, this court taketh them in hand and puniſheth them exemplarily. But for this apprehenſion of a diſgrace, that a fillip to the perſon ſhould be a mortal wound to the reputation, it were good that men did hearken unto the ſaying of Conſalvo, the great and famous commander, that was wont to ſay, a gentleman's honour ſhould be *de tela craſſiore*, of a good ſtrong warp or web, that every little thing ſhould not catch in it; when as now it ſeems they are but of cobweb-lawn or ſuch light ſtuff, which certainly is weakneſs, and not true greatneſs of mind, but like a ſick man's body, that is ſo tender that it feels every thing. And ſo much in maintenance and demonſtration of the wiſdom and juſtice of the law of the land.

For the capacity of this court, I take this to be a ground infallible: that whereſoever an offence is capital, or matter of felony, though it be not acted, there the combination or practice tending to that offence is puniſhable in this court as a high miſdemeanor. So practice to impoiſon, though it took no effect; waylaying to murder, though it took no effect, and the like; have been adjudged heinous miſdemeanors puniſhable in this court. Nay, inceptions and preparations in inferior crimes (that are not capital) as ſuborning and preparing of witneſſes that were never depoſed, or depoſed nothing material, have likewiſe been cenſured in this court, as appeareth by the decree in Garnon's caſe.

Why then, the major propoſition being ſuch, the minor cannot be denied: for every appointment of the field is but combination and plotting of murder; let them gild it how they liſt, they ſhall never have fairer terms of me in place of juſtice. Then the concluſion followeth, that it is a caſe fit for the cenſure of this court. And of this there be precedents in the very point of challenge.

It was the caſe of Wharton, plaintiff againſt Ellekar and Acklam defendants, where Acklam being a follower of Ellekar's, was cenſured for carrying a challenge from Ellekar to Wharton, though the challenge was not put in writing, but delivered only by word of meſſage; and there are words in the decree, that ſuch challenges are to the ſubverſion of government.

Theſe

Theſe things are well known, and therefore I needed not ſo much to have inſiſted upon them, but that in this caſe I would be thought not to innovate any thing of my own head, but to follow the former precedents of the court, though I mean to do it more throughly, becauſe the time requires it more.

Therefore now to come to that which concerneth my part; I ſay, that by the favour of the King and the court, I will proſecute in this court in the caſes following.

If any man ſhall appoint the field, though the fight be not acted or performed.

If any man ſhall ſend any challenge in writing, or any meſſage of challenge.

If any man carry or deliver any writing or meſſage of challenge.

If any man ſhall accept or return a challenge.

If any man ſhall accept to be a ſecond in a challenge of either ſide.

If any man ſhall depart the realm, with intention and agreement to perform the fight beyond the ſeas.

If any man ſhall revive a quarrel by any ſcandalous bruits or writings, contrary to a former proclamation publiſhed by his Majeſty in that behalf.

Nay, I hear there be ſome counſel learned of duels, that tell young men when they are before-hand, and when they are otherwiſe, and thereby incenſe and incite them to the duel, and make an art of it; I hope I ſhall meet with ſome of them too: and I am ſure, my lords, this courſe of preventing duels in nipping them in the bud, is fuller of clemency and providence than the ſuffering them to go on, and hanging men with their wounds bleeding, as they did in France.

To conclude, I have ſome petitions to make firſt to your lordſhip, my lord chancellor, that in caſe I be advertiſed of a purpoſe in any to go beyond the ſea to fight, I may have granted his Majeſty's writ of *Ne exeat regnum* to ſtop him, for this giant beſtrideth the ſea, and I would take and ſnare him by the foot on this ſide; for the combination and plotting is on this ſide, though it ſhould be acted beyond ſea. And your lordſhip ſaid notably the laſt time I made a motion in this buſineſs, that a man may be as well *fur de ſe*, as *felo de ſe*, if he ſteal out of the realm for a bad purpoſe; and for the ſatisfying of the words of the writ, no man will doubt but he doth *machinari contra coronam* (as the words of the writ be) that ſeeketh to murder a ſubject; for that is ever *contra coronam et dignitatem*. I have alſo a ſuit to your lordſhips all in general, that for juſtice ſake, and for true honour's ſake, honour of religion, law, and the King our maſter, againſt this fond and falſe diſguiſe or puppetry of honour, I may in my proſecution (which, it is like enough, may ſometimes ſtir coals, which I eſteem not for my particular, but as it may hinder the good ſervice) I may (I ſay) be countenanced and aſſiſted from your lordſhips. Laſtly, I have a petition to the nobles and gentlemen of England, that they would learn to eſteem themſelves at a juſt price. *Non hos quaeſitum munus in uſus*, their blood is not to be ſpilt like water or a vile thing; therefore that they would reſt perſuaded there cannot be a form of honour, except it be upon a worthy matter. But for this, *ipſi viderint*, I am reſolved. And thus much for the general, now to the preſent caſe.

The DECREE of the Star-Chamber againſt DUELS.

In Camera ſtellata coram concilio ibidem, 26 Januarii, 11 Jac. regis.

PRESENT

George, Lord Archbiſhop of Canterbury.
Thomas, Lord Elleſmere, Lord Chancellor of England.
Henry, Earl of Northampton, Lord Privy Seal.
Charles, Earl of Nottingham, Lord High Admiral of England.
Thomas, E. of Suffolk, lord Chamberlain.
John, Lord Biſhop of London.
Edward, Lord Zouch.
William, Lord Knolles, Treaſurer of the Houſhold.
Edward, Lord Wotton, Comptroller.
John, Lord Stanhope, Vice-chamberlain.
Sir Edward Coke, Knight, Lord Chief Juſtice of England.
Sir Henry Hobart, Knight, Lord Chief Juſtice of the Common-pleas.
Sir Julius Cæſar, Knight, Chancellor of the Exchequer.

THIS day was heard and debated at large the ſeveral matters of informations here exhibited by Sir Francis Bacon, knight, his Majeſty's attorney-general, the one againſt William Prieſt, gentleman, for writing and ſending a letter of challenge, together with a ſtick, which ſhould be the length of the weapon: and the other againſt Richard Wright, eſquire, for carrying and delivering the ſaid letter and ſtick unto the party challenged, and for other contemptuous and inſolent behaviour uſed before the juſtices of the peace in Surry at their ſeſſions, before whom he was convented. Upon the opening of which cauſe, his Highneſs's ſaid attorney-general did firſt give his reaſon to the court, why, in a caſe which he intended ſhould be a leading caſe for the repreſſing of ſo great a miſchief in the commonwealth, and concerning an offence which reigneth chiefly amongſt perſons of honour and quality, he ſhould begin with a cauſe which had paſſed between ſo mean perſons as the defendants ſeemed to be; which he ſaid was done, becauſe he found this cauſe ready publiſhed, and in ſo growing an evil, he thought good to loſe no time; whereunto he added, that it was not amiſs ſometimes to beat the dog before the lion; ſaying farther, that he thought it would be ſome motive for perſons of birth and countenance to leave it, when they ſaw it was taken up by baſe and mechanical fellows; but concluded, that he reſolved to proceed without reſpect of perſons for the time to come, and for the preſent to ſupply the meanneſs of this particular caſe by inſiſting the longer upon the general point.

Wherein he did firſt expreſs unto the court at large, the greatneſs and dangerous conſequence of this preſumptuous offence, which extorted revenge out of the magiſtrate's hand, and gave boldneſs to private men to be law-givers to themſelves; the rather, becauſe it is an offence that doth juſtify itſelf againſt the law, and plainly gives the law an affront; deſcribing alſo the miſerable effect which it draweth upon private families, by cutting off young men, otherwiſe of good hope; and chiefly the loſs of the King and the commonwealth, by the caſting away of much good blood, which, being ſpent in the field upon occaſion of ſervice, were able to continue the renown, which this kingdom hath obtained in all ages, of being eſteemed victorious.

Secondly, his Majeſty's ſaid attorney-general did diſcourſe touching the cauſes and remedies of this miſchief that prevailed ſo in theſe times; ſhewing the ground thereof to be a falſe and erroneous imagination of honour and credit, according to the term which was given to thoſe duels by a former proclamation of his Majeſty's, which called them bewitching duels, for that it is no better than a kind of ſorcery, which enchanteth the ſpirits of young men, which bear great minds, with a ſhew of honour in that which is no honour indeed; being againſt religion, law, moral virtue, and againſt the precedents and examples of the beſt times, and valianteſt nations of the world; which though they excelled for proweſs and military virtue in a publick quarrel, yet knew not what theſe private duels meant; ſaying farther, that there was too much way and countenance given unto theſe duels, by the courſe that is held by noblemen and gentlemen in compounding of quarrels, who uſe to ſtand too punctually upon conceits of

ſatisfactions and diſtinctions, what is before-hand, and what behind-hand, which do but feed the humour: adding likewiſe that it was no fortitude to ſhew valour in a quarrel, except there were a juſt and worthy ground of the quarrel; but that it was weakneſs to ſet a man's life at ſo mean a rate as to beſtow it upon trifling occaſions, which ought to be rather offered up and ſacrificed to honourable ſervices, publick merits, good cauſes, and noble adventures. And as concerning the remedies, he concluded; that the only way was, that the ſtate would declare a conſtant and ſettled reſolution to maſter and put down this preſumption in private men, of whatſoever degree, of righting their own wrongs, and this to do at once; for that then every particular man would think himſelf acquitted in his reputation, when that he ſhall ſee that the ſtate takes his honour into their hands, and ſtandeth between him and any intereſt or prejudice, which he might receive in his reputation for obeying: whereunto he added likewiſe, that the wiſeſt and mildeſt way to ſuppreſs theſe duels, was rather to puniſh in this court all the acts of preparation, which did in any wiſe tend to the duels (as this of challenges and the like) and ſo to prevent the capital puniſhment, and to vex the root in the branches, than to ſuffer them to run on to the execution, and then to puniſh them capitally after the manner of France; where of late times gentlemen of great quality that had killed others in duel, were carried to the gibbet with their wounds bleeding, leſt a natural death ſhould keep them from the example of juſtice.

Thirdly, His Majeſty's ſaid attorney-general did, by many reaſons which he brought and alledged, free the law of England from certain vain and childiſh exceptions, which are taken by theſe duelliſts: the one, becauſe the law makes no difference in puniſhment between an inſidious and foul murther, and the killing a man upon challenge and fair terms, as they call it. The other, for that the law hath not provided ſufficient puniſhment and reparation for contumely of words, as the lye, and the like; wherein his Majeſty's ſaid attorney-general did ſhew, by many weighty arguments and examples, that the law of England did conſent with the law of God and the law of nations in both thoſe points, and that this diſtinſtion in murther between foul and fair, and this grounding of mortal quarrels upon uncivil and reproachful words, or the like diſgraces, was never authorized by any law or ancient examples; but it is a late vanity crept in from the practice of the French, who themſelves ſince have been ſo weary of it, as they have been forced to put it down with all ſeverity.

Fourthly, His Majeſty's ſaid attorney-general did prove unto the court by rules of law and precedents, that this court hath capacity to puniſh ſending and accepting of challenges, though they were never acted nor executed; taking for a ground infallible, that whereſoever an offence is capital or matter of felony, if it be acted and performed, there the conſpiracy, combination, or practice tending to the ſame offence is puniſhable as a high miſdemeanor, although they never were performed. And therefore, that practice to impoiſon, though it took no effect, and the like, have been puniſhed in this court; and cited the precedent in Garnon's caſe, wherein a crime of a much inferior nature, the ſuborning and preparing of witneſſes, though they never were depoſed, or depoſed nothing material, was cenſured in this court: whereupon he concluded, that for as much as every appointment of the field is in law but a combination of plotting of a murther, howſoever men might gild it; that therefore it was a caſe fit for the cenſure of this court: and therein he vouched a precedent in the very point, that in a caſe between Wharton plaintiff, and Ellekar and Acklam defendants; Acklam being a follower of Ellekar, had carried a challenge unto Wharton; and although it were by word of mouth, and not by writing, yet it was ſeverely cenſured by the court; the decree having words, that ſuch challenges do tend to the ſubverſion of government. And therefore his Majeſty's attorney willed the ſtanders-by to take notice that it was no innovation that he brought in, but a proceeding according to former precedents of the court, although he purpoſed to follow it more thoroughly than had been done ever heretofore, becauſe the times did more and more require it. Laſtly, his Majeſty's ſaid attorney-general did declare and publiſh to the court in ſeveral articles, his purpoſe and reſolution in what caſes he did intend to proſecute offences of that nature in this court; that is to ſay, that if any man ſhall appoint the field, although the fight be not acted or performed; if any man

ſhall

ſhall ſend any challenge in writing or meſſage of challenge; if any man ſhall carry or deliver any writing or meſſage of challenge; if any man ſhall accept or return a challenge; if any man ſhall accept to be a ſecond in a challenge of either part; if any man ſhall depart the realm with intention and agreement to perform the fight beyond the ſeas; if any man ſhall revive a quarrel by any ſcandalous bruits or writings contrary to a former proclamation, publiſhed by his Majeſty in that behalf; that in all theſe caſes his Majeſty's attorney-general, in diſcharge of his duty, by the favour and aſſiſtance of his Majeſty and the court, would bring the offenders, of what ſtate or degree ſoever, to the juſtice of this court, leaving the lords commiſſioners martial to the more exact remedies: adding farther, that he heard there were certain counſel learned of duels, that tell young men when they are beforehand, and when they are otherwiſe, and did incenſe and incite them to the duel, and made an art of it; who likewiſe ſhould not be forgotten. And ſo concluded with two petitions, the one in particular to the lord chancellor, that in caſe advertiſement were given of a purpoſe in any to go beyond the ſeas to fight, there might be granted his Majeſty's writ of *Ne exeat regnum* againſt him; and the other to the lords in general, that he might be aſſiſted and countenanced in this ſervice.

After which opening and declaration of the general cauſe, his Majeſty's ſaid attorney did proceed to ſet forth the proofs of this particular challenge and offence now in hand, and brought to the judgment and cenſure of this honourable court; whereupon it appeared to this honourable court by the confeſſion of the ſaid defendant Prieſt himſelf, that he having received ſome wrong and diſgrace at the hands of one Hutcheſt, did thereupon, in revenge thereof, write a letter to the ſaid Hutcheſt, containing a challenge to fight with him at ſingle rapier, which letter the ſaid Prieſt did deliver to the ſaid defendant Wright, together with a ſtick containing the length of the rapier, wherewith the ſaid Prieſt meant to perform the fight. Whereupon the ſaid Wright did deliver the ſaid letter to the ſaid Hutcheſt, and did read the ſame unto him; and after the reading thereof, did alſo deliver to the ſaid Hutcheſt the ſaid ſtick, ſaying, that the ſame was the length of the weapon mentioned in the ſaid letter. But the ſaid Hutcheſt (dutifully reſpecting the preſervation of his Majeſty's peace) did refuſe the ſaid challenge, whereby no farther miſchief did enſue thereupon.

This honourable court, and all the honourable preſence this day ſitting, upon grave and mature deliberation, pondering the quality of theſe offences, they generally approved the ſpeech and obſervations of his Majeſty's ſaid attorney-general, and highly commended his great care and good ſervice in bringing a cauſe of this nature to publick puniſhment and example, and in profeſſing a conſtant purpoſe to go on in the like courſe with others: letting him know, that he might expect from the court all concurrence and aſſiſtance in ſo good a work. And thereupon the court did by their ſeveral opinions and ſentences declare how much it imported the peace and proſperous eſtate of his Majeſty and his kingdom to nip this practice and offence of duels in the head, which now did over-ſpread and grow univerſal, even among mean perſons, and was not only entertained in practice and cuſtom, but was framed into a kind of art and precepts: ſo that, according to the ſaying of the Scripture, *miſchief* is *imagined like a law*. And the court with one conſent did declare their opinions: That by the ancient law of the land, all inceptions, preparations, and combinations to execute unlawful acts, though they never be performed, as they be not to be puniſhed capitally, except it be in caſe of treaſon, and ſome other particular caſes of ſtatute law; ſo yet they are puniſhable as miſdemeanors and contempts: and that this court was proper for offences of ſuch nature; eſpecially in this caſe, where the bravery and inſolency of the times are ſuch as the ordinary magiſtrates and juſtices that are truſted with the preſervation of the peace, are not able to maſter and repreſs thoſe offences, which were by the court at large ſet forth, to be not only againſt the law of God, to whom, and his ſubſtitutes, all revenge belongeth, as part of his prerogative, but alſo againſt the oath and duty of every ſubject unto his Majeſty, for that the ſubject doth ſwear unto him by the ancient law allegiance of life and member; whereby it is plainly inferred, that the ſubject hath no diſpoſing power over himſelf of life and member to be ſpent or ventured according to his own paſſions

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and fancies, inſomuch as the very practice of chivalry in juſts and tournays, which are but images of martial actions, appear by ancient precedents not to be lawful without the King's licence obtained. The court alſo noted, that theſe private duels or combats were of another nature from the combats which have been allowed by the law as well of this land as of other nations for the trial of rights or appeals. For that thoſe combats receive direction and authority from the law; whereas theſe contrariwiſe ſpring only from the unbridled humours of private men. And as for the pretence of honour, the court much miſliking the confuſion of degrees which is grown of late (every man aſſuming unto himſelf the term and attribute of honour) did utterly reject and condemn the opinion that the private duel, in any perſon whatſoever, had any grounds of honour; as well becauſe nothing can be honourable that is not lawful, and that it is no magnanimity or greatneſs of mind, but a ſwelling and tumour of the mind, where there faileth a right and ſound judgment; as alſo for that it was rather juſtly to be eſteemed a weakneſs, and a conſcience of ſmall value in a man's ſelf to be dejected ſo with a word or trifling diſgrace, as to think there is no re-cure of it, but by the hazard of life; whereas true honour in perſons that know their own worth is not of any ſuch brittle ſubſtance, but of a more ſtrong compoſition. And finally, the court ſhewing a firm and ſettled reſolution to proceed with all ſeverity againſt theſe duels, gave warning to all young noblemen and gentlemen, that they ſhould not expect the like connivance or toleration as formerly have been, but that juſtice ſhould have a full paſſage without protection or interruption. Adding, that after a ſtrait inhibition, whoſoever ſhould attempt a challenge or combat, in caſe where the other party was reſtrained to anſwer him (as now all good ſubjects are) did by their own principles receive the diſhonour and diſgrace upon himſelf.

And for the preſent cauſe, the court hath ordered, adjudged, and decreed, that the ſaid William Prieſt and Richard Wright be committed to the priſon of the Fleet, and the ſaid Prieſt to pay five hundred pounds, and the ſaid Wright five hundred marks, for their ſeveral fines to his Majeſty's uſe. And to the end, that ſome more publick example may be made hereof amongſt his Majeſty's people, the court hath further ordered and decreed, that the ſaid Prieſt and Wright ſhall at the next aſſizes, to be holden in the county of Surry, publickly, in face of the court, the judges ſitting, acknowledge their high contempt and offence againſt God, his Majeſty, and his laws, and ſhew themſelves penitent for the ſame.

Moreover, the wiſdom of this high and honourable court thought it meet and neceſſary that all ſorts of his Majeſty's ſubjects ſhould underſtand and take notice of that which hath been ſaid and handled this day touching this matter, as well by his Highneſs's attorney-general, as by the lords judges, touching the law in ſuch caſes. And therefore the court hath enjoined Mr. Attorney to have ſpecial care to the penning of this decree, for the ſetting forth in the ſame ſummarily the matters and reaſons, which have been opened and delivered by the court touching the ſame; and nevertheleſs alſo at ſome time convenient to publiſh the particulars of his ſpeech and declaration, as very meet and worthy to be remembered and made known unto the world, as theſe times are. And this decree, being in ſuch ſort carefully drawn and penned, the whole court thought it meet, and ſo have ordered and decreed, that the ſame be not only read and publiſhed at the next aſſizes for Surry, at ſuch time as the ſaid Prieſt and Wright are to acknowledge their offences as aforeſaid; but that the ſame be likewiſe publiſhed and made known in all ſhires of this kingdom. And to that end the juſtices of aſſize are required by this honourable court to cauſe this decree to be ſolemnly read and publiſhed in all the places and ſittings of their ſeveral circuits, and in the greateſt aſſembly; to the end, that all his Majeſty's ſubjects may take knowledge and underſtand the opinion of this honourable court in this caſe, and in what meaſure his Majeſty and this honourable court purpoſeth to puniſh ſuch as ſhall fall into the like contempt and offences hereafter. Laſtly, this honourable court much approving that which the right honourable Sir Edward Coke, knight, lord Chief Juſtice of England, did now deliver touching the law in this caſe of duels, hath enjoined his lordſhip to report the ſame in print, as he hath formerly done divers other caſes, that ſuch as underſtand not the law in that behalf, and all others, may better direct themſelves, and prevent the danger thereof hereafter.

THE CHARGE OF Sir FRANCIS BACON, Kt. his Majeſty's Attorney-General, AGAINST WILLIAM TALBOT, a counſellor at law, of Ireland,

Upon an information in the Star-Chamber *Ore tenus*, for a writing under his hand, whereby the ſaid William Talbot being demanded, Whether the doctrine of Suarez, touching depoſing and killing of Kings excommunicated, were true or no? he anſwered, That he referred himſelf unto that which the catholick Roman church ſhould determine thereof.

Ultimo die termini Hilarii, undecimo Jacobi Regis.

My Lords,

I Brought before you the firſt ſitting of this term the cauſe of duels; but now this laſt ſitting I ſhall bring before you a cauſe concerning the greateſt duel which is in the Chriſtian world, the duels and conflicts between the lawful authority of ſovereign Kings, which is God's ordinance for the comfort of human ſociety, and the ſwelling pride and uſurpation of the ſee of Rome *in temporalibus*, tending altogether to anarchy and confuſion. Wherein if this pretence in the Pope of Rome, by cartels to make ſovereign Princes as the banditti, and to proſcribe their lives, and to expoſe their kingdoms to prey; if theſe pretences, I ſay, and all perſons that ſubmit themſelves to that part of the Pope's power, be not by all poſſible ſeverity repreſſed and puniſhed, the ſtate of Chriſtian Kings will be no other than the ancient torment deſcribed by the poets in the hell of the heathen; a man ſitting richly robed, ſolemnly attended, delicious fare, *etc.* with a ſword hanging over his head, hanging by a ſmall thread, ready every moment to be cut down by an accurſing and accurſed hand. Surely I thought they had been the prerogatives of God alone, and of his ſecret judgment: *Solvam cingula regum, I will looſen the girdles of Kings*; or again, *He poureth contempt upon princes*; or *I will give a King in my wrath, and take him away again in my diſpleaſure*; and the like: but if theſe be the claims of a mortal man, certainly they are but the myſteries of that perſon which *exalts himſelf above all that is called God, ſupra omne quod dicitur Deus*. Note it well, not above God (though that in a ſenſe be true in reſpect of the authority they claim over the Scriptures) but *above all that is called God*; that is, lawful Kings and magiſtrates.

But, my lords, in this duel I find this Talbot, that is now before you, but a coward; for he hath given ground, he hath gone backward and forward; but in ſuch a faſhion, and with ſuch interchange of repenting and relapſing, as I cannot tell whether it doth extenuate or aggravate his offence. If he ſhall more publickly in the face of the court fall and ſettle upon a right mind, I ſhall be glad of it; and he that would be againſt the King's mercy, I would he might need the King's mercy: but nevertheleſs the court will proceed by rules of juſtice.

The offence wherewith I charge this Talbot, priſoner at the bar, is this in brief and effect: That he hath maintained, and maintaineth under his hand, a power in the Pope for the depoſing and murthering of Kings. In what ſort he doth this, when I come to the proper and particular charge, I will deliver it in his own words without preſſing or ſtraining.

But before I come to the particular charge of this man, I cannot proceed ſo coldly; but I muſt expreſs unto your lordſhips the extreme and imminent danger wherein our dear and dread Sovereign is, and in him we all; nay, and wherein all Princes of both religions (for it is a common cauſe) do ſtand at this day, by the ſpreading and enforcing of this furious and pernicious opinion of the Pope's temporal power: which though the modeſt ſort would blanch with the diſtinction of *in ordine ad ſpiritualia*, yet that is but an eluſion; for he that maketh the diſtinction, will alſo make the caſe. This peril, though it be in itſelf notorious,

yet becauſe there is a kind of dulneſs, and almoſt a lethargy in this age, give me leave to ſet before you two glaſſes, ſuch as certainly the like never met in one age; the glaſs of France, and the glaſs of England. In that of France the tragedies acted and executed in two immediate Kings; in the glaſs of England, the ſame, or more horrible, attempted likewiſe in a Queen and King immediate, but ending in a happy deliverance. In France, Henry III. in the face of his army, before the walls of Paris, ſtabbed by a wretched Jacobine fryar. Henry IV. (a prince that the French do ſurname the Great) one that had been a ſaviour and redeemer of his country from infinite calamities, and a reſtorer of that monarchy to the ancient ſtate and ſplendor, and a prince almoſt heroical (except it be in the point of revolt from religion) at a time when he was as it were to mount on horſeback for the commanding of the greateſt forces that of long time had been levied in France, this King likewiſe ſtillettoed by a raſcal votary, which had been enchanted and conjured for that purpoſe.

In England, Queen Elizabeth, of bleſſed memory, a Queen comparable and to be rank'd with the greateſt Kings, oftentimes attempted by like votaries, Somerville, Parry, Savage, and others, but ſtill protected by the watchman that ſlumbereth not. Again, our excellent ſovereign King James, the ſweetneſs and clemency of whoſe nature were enough to quench and mortify all malignity, and a King ſhielded and ſupported by poſterity; yet this King in the chair of Majeſty (his vine and olive branches about him) attended by his nobles and third eſtate in parliament; ready, in the twinkling of an eye (as if it had been a particular doomſday) to have been brought to aſhes, diſperſed to the four winds. I noted the laſt day, my lord chief juſtice, when he ſpake of this powder treaſon, he laboured for words; though they came from him with great efficacy, yet he truly confeſſed, and ſo muſt all men, that that treaſon is above the charge and report of any words whatſoever.

Now, my lords, I cannot let paſs, but in theſe glaſſes which I ſpake of, beſides the facts themſelves and danger, to ſhew you two things; the one, the ways of God Almighty, which turneth the ſword of Rome upon the Kings that are the vaſſals of Rome, and over them gives it power; but protecteth thoſe Kings which have not accepted the yoke of his tyranny, from the effects of his malice: the other, that (as I ſaid at firſt) this is a common cauſe of Princes; it involveth Kings of both religions; and therefore his Majeſty did moſt worthily and prudently ring out the alarm-bell, to awaken all other Princes to think of it ſeriouſly, and in time. But this is a miſerable caſe the while, that theſe Roman ſoldiers do either thruſt the ſpear into the ſides of God's anointed, or at leaſt they crown them with thorns; that is, piercing and pricking cares and fears, that they can never be quiet or ſecure of their lives or ſtates. And as this peril is common to Princes of both religions, ſo Princes of both religions have been likewiſe equally ſenſible of every injury that touched their temporals.

Thuanus reports in his ſtory, that when the realm of France was interdicted by the violent proceedings of Pope Julius the ſecond, the King Lewis the twelfth, otherwiſe noted for a moderate Prince, cauſed coins of gold to be ſtamped with his own image, and this ſuperſcription, *Perdam nomen Babylonis e terra.* And Thuanus ſaith, himſelf hath ſeen divers pieces thereof. So as this catholick King was ſo much incenſed at that time, in reſpect of the Pope's uſurpation, as he did fore-run Luther, in applying Babylon to Rome. Charles the fifth, emperor, who was accounted one of the Pope's beſt ſons, yet proceeded in matter temporal towards Pope Clement with ſtrange rigour; never regarding the pontificality, but kept him priſoner eighteen months in a peſtilent priſon; and was hardly diſſuaded by his council from having ſent him captive into Spain; and made ſport with the threats of Froſberg the German, who wore a ſilk rope under his caſſock, which he would ſhew in all companies; telling them that he carried it to ſtrangle the Pope with his own hands. As for Philip the fair, it is the ordinary example, how he brought Pope Boniface the eighth to an ignominious end, dying mad and enraged; and how he ſtyled his reſcript to the Pope's bull, whereby he challenged his temporals, *Sciat fatuitas veſtra*, not your beatitude, but your ſtultitude; a ſtyle worthy to be continued in like caſes; for certainly that claim is merely folly and fury. As for native examples here, it is too long a field to

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enter into them. Never Kings of any nation kept the partition-wall between temporal and ſpiritual better in times of greateſt ſuperſtition: I report me to King Edward I. that ſet up ſo many croſſes, and yet croſſed that part of the Pope's juriſdiction, no man more ſtrongly. But theſe things have paſſed better pens and ſpeeches: here I end them.

But now to come to the particular charge of this man, I muſt inform your lordſhips the occaſion and nature of this offence: There hath been publiſhed lately to the world a work of Suarez a Portugueze, a profeſſor in the univerſity of Coimbra, a confident and daring writer, ſuch an one as Tully deſcribes in deriſion; *nihil tam verens, quam ne dubitare aliqua de re videretur:* one that fears nothing but this, leſt he ſhould ſeem to doubt of any thing. A fellow that thinks with his magiſtrality and gooſe-quill to give laws and menages to crowns and ſcepters. In this man's writing this doctrine of depoſing and murdering Kings, ſeems to come to a higher elevation than heretofore; and it is more arted and poſitived than in others. For in the paſſages which your lordſhips ſhall hear read anon, I find three aſſertions which run not in the vulgar track, but are ſuch as wherewith mens ears (as I ſuppoſe) are not much acquainted; whereof the firſt is, That the Pope hath a ſuperiority over Kings, as ſubjects, to depoſe them; not only for ſpiritual crimes, as hereſy and ſchiſm, but for faults of a temporal nature; foraſmuch as a tyrannical government tendeth ever to the deſtruction of ſouls. So by this poſition, Kings of either religion are alike comprehended, and none exempted. The ſecond, that after a ſentence given by the Pope, this writer hath defined of a ſeries, or ſucceſſion, or ſubſtitution of hangmen, or *bourreaux*, to be ſure, leſt an executioner ſhould fail. For he ſaith, That when a King is ſentenced by the Pope to deprivation or death, the executioner, who is firſt in place, is he to whom the Pope ſhall commit the authority, which may be a foreign prince, it may be a particular ſubject, it may be, in general, to the firſt undertaker. But if there be no direction or aſſignation in the ſentence ſpecial nor general, then, *de jure*, it appertains to the next ſucceſſor (a natural and pious opinion; for commonly they are ſons, or brothers, or near of kin, all is one;) ſo as the ſucceſſor be apparent; and alſo that he be a catholick. But if he be doubtful, or that he be no catholick, then it devolves to the commonalty of the kingdom; ſo as he will be ſure to have it done by one miniſter or other. In the third he diſtinguiſheth of two kinds of tyrants, a tyrant in title, and a tyrant in regiment; the tyrant in regiment cannot be reſiſted or killed without a ſentence precedent by the Pope; but a tyrant in title may be killed by any private man whatſoever. By which doctrine he hath put the judgment of Kings titles (which I will undertake are never ſo clean but that ſome vain quarrel or exception may be made unto them) upon the fancy of every private man; and alſo couples the judgment and execution together, that he may judge him by a blow, without any other ſentence.

Your lordſhips ſee what monſtrous opinions theſe are, and how both theſe beaſts, the beaſt with ſeven heads, and the beaſt with many heads, Pope and people, are at once let in, and ſet upon the ſacred perſons of Kings.

Now to go on with the narrative; there was an extract made of certain ſentences and portions of this book (being of this nature that I have ſet forth) by a great prelate and counſellor, upon a juſt occaſion; and there being ſome hollowneſs and heſitation in theſe matters (wherein it is a thing impious to doubt) diſcovered and perceived in Talbot; he was aſked his opinion concerning theſe aſſertions, in the preſence of his Majeſty: and afterward they were delivered to him, that upon advice, and *ſedato animo*, he might declare himſelf. Whereupon, under his hand, he ſubſcribes thus;

May it pleaſe your honourable good lordſhips: Concerning this doctrine of Suarez, I do perceive, by what I have read in this book, that the ſame doth concern matter of faith, the controverſy growing upon expoſition of Scriptures and councils, wherein (being ignorant and not ſtudied) I cannot take upon me to judge; but I do ſubmit my opinion therein to the judgment of the catholick Roman church, as in all other points concerning faith I do. And for matter concerning my loyalty, I do acknowledge my Sovereign Liege Lord King James, to be lawful and undoubted King of all the kingdoms of England, Scotland, and Ireland; and I will bear true faith and allegiance to his Highneſs during my life. WILLIAM TALBOT.

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Now, my lords, upon theſe words I conceive Talbot to have committed a great offence, and ſuch a one, as if he had entered into a voluntary and malicious publication of the like writing, it would have been too great an offence for the capacity of this court. But becauſe it grew from a queſtion aſked by a council of eſtate, and ſo rather ſeemeth, in a favourable conſtruction, to proceed from a kind of ſubmiſſion to anſwer, than from any malicious or inſolent will; it was fit, according to the clemency of theſe times, to proceed in this manner before your lordſhips: and yet let the hearers take theſe things right; for certainly, if a man be required by the lords of the council to deliver his opinion whether King James be King or no? and he deliver his opinion that he is not, this is high treaſon: but I do not ſay that theſe words amount to that; and therefore let me open them truly to your lordſhips, and therein open alſo (it may be) the eyes of the offender himſelf, how far they reach.

My lords, a man's allegiance muſt be independent and certain, not dependent and conditional. Elizabeth Barton, that was called the holy maid of Kent, affirmed, that if King Henry VIII. did not take Katherine of Spain again to his wife within a twelvemonth, he ſhould be no King: and this was judged treaſon. For though this act be contingent and future, yet the preparing of the treaſon is preſent.

And in like manner, if a man ſhould voluntarily publiſh or maintain, that whenſoever a bull or deprivation ſhall come forth againſt the King, that from thenceforth he is no longer King; this is of like nature. But with this I do not charge you neither; but this is the true latitude of your words, That if the doctrine touching the killing of Kings be matter of faith, that you ſubmit yourſelf to the judgment of the catholick Roman church: ſo as now (to do you right) your allegiance doth not depend ſimply upon a ſentence of the Pope's deprivation againſt the King; but upon another point alſo, if theſe doctrines be already, or ſhall be declared to be matter of faith. But, my lords, there is little won in this: there may be ſome difference to the guilt of the party, but there is little to the danger of the King. For the ſame Pope of Rome may, with the ſame breath, declare both. So as ſtill, upon the matter, the King is made but tenant at will of his life and kingdoms; and the allegiance of his ſubjects is pinned upon the Pope's acts. And certainly it is time to ſtop the current of this opinion of acknowledgement of the Pope's power *in temporalibus*; or elſe it will ſap and ſupplant the ſeat of Kings. And let it not be miſtaken, that Mr. Talbot's offence ſhould be no more than the refuſing the oath of allegiance. For it is one thing to be ſilent, and another thing to affirm. As for the point of matter of faith, or not of faith, to tell your lordſhips plain, it would aſtoniſh a man to ſee the gulf of this implied belief. Is nothing excepted from it? If a man ſhould aſk Mr. Talbot, Whether he do condemn murder, or adultery, or rape, or the doctrine of Mahomet, or of Arius, inſtead of Suarez? Muſt the anſwer be with this exception, that if the queſtion concern matter of faith (as no queſtion it doth, for the moral law is matter of faith) that therein he will ſubmit himſelf to what the church ſhall determine? And, no doubt, the murder of princes is more than ſimple murder. But to conclude, Talbot, I will do you this right, and I will not be reſerved in this, but to declare that, that is true; that you came afterwards to a better mind; wherein, if you had been conſtant, the King, out of his great goodneſs, was reſolved not to have proceeded with you in courſe of juſtice: but then again you ſtarted aſide like a broken bow. So that by your variety and vacillation you loſt the acceptable time of the firſt grace, which was, not to have convented you.

Nay, I will go farther with you: your laſt ſubmiſſion I conceive to be ſatisfactory and complete; but then it was too late, the King's honour was upon it; it was publiſhed and a day appointed for hearing; yet what preparation that may be to the ſecond grace of pardon, that I know not: but I know my lords, out of their accuſtomed favour, will admit you not only to your defence concerning that that hath been charged; but to extenuate your fault by any ſubmiſſion that now God ſhall put into your mind to make.

THE CHARGE GIVEN BY Sir FRANCIS BACON, Knight, His MAJESTY'S Attorney-General,

Againſt Mr. OLIVER ST. JOHN, for ſcandalizing and traducing in the publick ſeſſions, letters ſent from the lords of the council touching the benevolence.

MY LORDS,

I Shall inform you *ore tenus*, againſt this gentleman Mr. I. S. a gentleman, as it ſeems, of an ancient houſe and name; but, for the preſent, I can think of him by no other name, than the name of a great offender. The nature and quality of his offence, in ſum, is this: This gentleman hath, upon advice, not ſuddenly by his pen, nor by the ſlip of his tongue; not privately, or in a corner, but publickly, as it were, to the face of the King's miniſters and juſtices, ſlandered and traduced the King our Sovereign, the law of the land, the parliament, and infinite particulars of his Majeſty's worthy and loving ſubjects. Nay, the ſlander is of that nature, that it may ſeem to intereſt the people in grief and diſcontent againſt the ſtate; whence might have enſued matter of murmur and ſedition. So that it is not a ſimple ſlander, but a ſeditious ſlander, like to that the poet ſpeaketh of,—*Calamoſque armare veneno*. A venomous dart that hath both iron and poiſon.

To open to your lordſhips the true ſtate of this offence, I will ſet before you, firſt, the occaſion whereupon Mr. I. S. wrought: then the offence itſelf in his own words: and laſtly, the points of his charge.

My lords, you may remember that there was the laſt parliament an expectation to have had the King ſupplied with treaſure, although the event failed. Herein it is not fit for me to give opinion of an houſe of parliament, but I will give teſtimony of truth in all places. I ſerved in the lower houſe, and I obſerved ſomewhat. This I do affirm, that I never could perceive but that there was in that houſe a general diſpoſition to give, and to give largely. The clocks in the houſe perchance might differ; ſome went too faſt, ſome went too ſlow; but the diſpoſition to give was general: ſo that I think I may truly ſay, *ſolo tempore lapſus amor*.

This accident happening thus beſides expectation, it ſtirred up, and awaked in divers of his Majeſty's worthy ſervants and ſubjects of the clergy, the nobility, the court, and others here near at hand, an affection loving and chearful, to preſent the King ſome with plate, ſome with money, as free-will offerings (a thing that God Almighty loves, a chearful giver: what an evil eye doth I know not). And, my lords, let me ſpeak it plainly unto you: God forbid any body ſhould be ſo wretched as to think that the obligation of love and duty, from the ſubject to the King, ſhould be joint and not ſeveral. No, my lords, it is both. The ſubject petitioneth to the King in parliament. He petitioneth likewiſe out of parliament. The King on the other ſide gives graces to the ſubject in parliament: he gives them likewiſe, and poureth them upon his people out of parliament; and ſo no doubt the ſubject may give to the King in parliament, and out of parliament. It is true the parliament is *intercurſus magnus*, the great intercourſe and main current of graces, and donatives from the King to the people, from the people to the King: but parliaments are held but at certain times; whereas the paſſages are always open for particulars; even as you ſee great rivers have their tides, but particular ſprings and fountains run continually.

To proceed therefore: As the occaſion (which was the failing of ſupply by parliament) did awake the love and benevolence of thoſe that were at hand to give; ſo it was apprehended and thought fit by my lords of the council to make a proof whether the occaſion and example both, would not awake thoſe in the country of the better ſort to follow. Whereupon, their lordſhips deviſed and

directed letters unto the ſheriffs and juſtices, which declared what was done here above, and wiſhed that the country might be moved, eſpecially men of value.

Now, my lords, I beſeech you give me favour and attention to ſet forth and obſerve unto you five points (I will number them, becauſe other men may note them; and I will but touch them, becauſe they ſhall not be drowned or loſt in diſcourſe) which I hold worthy the obſervation, for the honour of the ſtate and confuſion of ſlanders; whereby it will appear moſt evidently what care was taken, that that which was then done might not have the effect, no nor the ſhew, no nor ſo much as the ſhadow of a tax; and that it was ſo far from breeding or bringing in any ill precedent or example, as contrariwiſe it is a corrective that doth correct and allay the harſhneſs and danger of former examples.

The firſt is, that what was done was done immediately after ſuch a parliament, as made general profeſſion to give, and was interrupted by accident: ſo as you may truly and juſtly eſteem it, *tanquam poſthuma proles parliamenti*, as an after-child of the parliament, and in purſuit (in ſome ſmall meaſure) of the firm intent of a parliament paſt. You may take it alſo, if you will, as an advance or proviſional help until a future parliament; or as a gratification ſimply without any relation to a parliament; you can no ways take it amiſs.

The ſecond is, that it wrought upon example, as a thing not deviſed or projected, or required; no nor ſo much as recommended, until many that were never moved nor dealt with, *ex mero motu*, had freely and frankly ſent in their preſents. So that the letters were rather like letters of news, what was done at London, than otherwiſe: and we know *exempla ducunt, non trahunt*; examples they do but lead, they do not draw nor drive.

The third is, that it was not done by commiſſion under the great ſeal; a thing warranted by a multitude of precedents, both ancient, and of late time, as you ſhall hear anon, and no doubt warranted by law: ſo that the commiſſions be of that ſtyle and tenour, as that they be to move and not to levy: but this was done by letters of the council, and no higher hand or form.

The fourth is, that theſe letters had no manner of ſhew of any binding act of ſtate: for they contain not any ſpecial frame or direction how the buſineſs ſhould be managed; but were written as upon truſt, leaving the matter wholly to the induſtry and confidence of thoſe in the country: ſo that it was an *abſque compoto*; ſuch a form of letter as no man could fitly be called to account upon.

The fifth and laſt point is, that the whole carriage of the buſineſs had no circumſtance compulſory. There was no proportion or rate ſet down, not ſo much as by way of a wiſh; there was no menace of any that ſhould deny; no reproof of any that did deny; no certifying of the names of any that had denied. Indeed, if men could not content themſelves to deny, but that they muſt cenſure and inveigh, nor to excuſe themſelves but they muſt accuſe the ſtate, that is another caſe. But I ſay, for denying, no man was apprehended, no nor noted. So that I verily think, that there is none ſo ſubtle a diſputer in the controverſy of *liberum arbitrium*, that can with all his diſtinctions faſten or carp upon the act, but that there was free-will in it.

I conclude therefore, my lords, that this was a true and pure benevolence; not an impoſition called a benevolence, which the ſtatute ſpeaks of; as you ſhall hear by one of my fellows. There is a great difference, I tell you (though Pilate would not ſee it) between *Rex Judaeorum*, and *ſe dicens Regem Judaeorum*. And there is a great difference between a benevolence, and an exaction called a benevolence, which the duke of Buckingham ſpeaks of in his oration to the city; and defineth it to be not what the ſubject of his good-will would give, but what the King of his good-will would take. But this, I ſay, was a benevolence wherein every man had a prince's prerogative, a negative voice; and this word (*excuſi mus*) was a plea peremptory. And therefore I do wonder how Mr. I. S. could foul or trouble ſo clear a fountain; certainly it was but his own bitterneſs and unſound humours.

Now to the particular charge: amongſt other countries, theſe letters of the lords came to the juſtices of D—ſhire, who ſignified the contents thereof, and gave directions and appointments for meetings concerning the buſineſs, to ſeveral

towns

towns and places within that county: and amongſt the reſt, notice was given unto the town of A. The mayor of A conceiving that this Mr. I. S. (being a principal perſon, and a dweller in that town) was a man likely to give both money and good example, dealt with him to know his mind: he intending (as it ſeems) to play prizes, would give no anſwer to the mayor in private, but would take time. The next day then being an appointment of the juſtices to meet, he takes occaſion, or pretends occaſion to be abſent, becauſe he would bring his papers upon the ſtage: and thereupon takes pen in hand, and inſtead of excuſing himſelf, ſits down and contriveth a ſeditious and libellous accuſation againſt the King and ſtate, which your lordſhips ſhall now hear, and ſends it to the mayor: and withal, becauſe the feather of his quill might fly abroad, he gives authority to the mayor to impart it to the juſtices, if he ſo thought good. And now, my lords, becauſe I will not miſtake or miſ-repeat, you ſhall hear the ſeditious libel in the proper terms and words thereof.

[Here the papers were read.]

My lords, I know this paper offends your ears much, and the ears of any good ſubject; and ſorry I am that the times ſhould produce offences of this nature: but ſince they do, I would be more ſorry they ſhould be paſſed without ſevere puniſhment: *Non tradite factum* (as the verſe ſays, altered a little) *aut ſi tradatis, facti quoque tradite poenam.* If any man have a mind to diſcourſe of the fact, let him likewiſe diſcourſe of the puniſhment of the fact.

In this writing, my lords, there appears a monſter with four heads, of the progeny of him that is the father of lyes, and takes his name from ſlander.

The firſt is a wicked and ſeditious ſlander; or (if I ſhall uſe the Scripture phraſe) a blaſpheming of the King himſelf; ſetting him forth for a Prince perjured in the great and ſolemn oath of his coronation, which is as it were the knot of the diadem; a Prince that ſhould be a violator and infringer of the liberties, laws, and cuſtoms of the kingdom; a mark for an Henry the Fourth; a match for a Richard the Second.

The ſecond is a ſlander and falſification, and wreſting of the law of the land groſs and palpable: it is truly ſaid by a civilian, *Tortura legum peſſima*, the torture of laws is worſe than the torture of men.

The third is a ſlander and falſe charge of the parliament, that they had denied to give to the King; a point of notorious untruth.

And the laſt is a ſlander and taunting of an infinite number of the King's loving ſubjects, that have given towards this benevolence and free contribution; charging them as acceſſary and co-adjutors to the King's perjury. Nay, you leave us not there, but you take upon you a pontifical habit, and couple your ſlander with a curſe; but thanks be to God, we have learned ſufficiently out of the Scripture, that *as the bird flies away, ſo the cauſeleſs curſe ſhall not come.*

For the firſt of theſe, which concerns the King, I have taken to myſelf the opening and aggravation thereof; the other three I have diſtributed to my fellows.

My lords, I cannot but enter into this part with ſome wonder and aſtoniſhment, how it ſhould come into the heart of a ſubject of England to vapour forth ſuch a wicked and venomous ſlander againſt the King, whoſe goodneſs and grace is comparable (if not incomparable) unto any of the Kings his progenitors. This therefore gives me a juſt and neceſſary occaſion to do two things: The one, to make ſome repreſentation of his Majeſty; ſuch as truly he is found to be in his government, which Mr. I. S. chargeth with violation of laws and liberties: The other, to ſearch and open the depth of Mr. I. S. his offence. Both which I will do briefly; becauſe the one, I cannot expreſs ſufficiently; and the other, I will not preſs too far.

My lords, I mean to make no panegyrick or laudative; the King delights not in it, neither am I fit for it: but if it were but a counſellor or nobleman, whoſe name had ſuffered, and were to receive ſome kind of reparation in this high court, I would do him that duty as not to paſs his merits and juſt attributes (eſpecially ſuch as are limited with the preſent caſe) in ſilence: for it is fit to burn incenſe where evil odours have been caſt and raiſed. Is it ſo that King James ſhall be

ſaid to be a violator of the liberties, laws, and cuſtoms of his kingdoms? Or is he not rather a noble and conſtant protector and conſervator of them all? I conceive this conſiſteth in maintaining religion, and the true church; in maintaining the laws of the kingdom, which is the ſubject's birth-right; in temperate uſe of the prerogative; in due and free adminiſtration of juſtice, and conſervation of the peace of the land.

For religion, we muſt ever acknowledge in the firſt place, that we have a King that is the principal conſervator of true religion through the Chriſtian world. He hath maintained it not only with ſceptre and ſword, but likewiſe by his pen; wherein alſo he is potent.

He hath awaked and re-authorized the whole party of the reformed religion throughout Europe; which through the inſolency and divers artifices and inchantments of the adverſe part, was grown a little dull and dejected: He hath ſummoned the fraternity of Kings to enfranchiſe themſelves from the uſurpation of the See of Rome: He hath made himſelf a mark of contradiction for it.

Neither can I omit, when I ſpeak of religion, to remember that excellent act of his Majeſty, which though it were done in a foreign country, yet the church of God is one, and the contagion of theſe things will ſoon paſs ſeas and lands: I mean, in his conſtant and holy proceeding againſt the heretick Vorſtius, whom (being ready to enter into the chair, and there to have authorized one of the moſt peſtilent and heatheniſh hereſies that ever was begun) his Majeſty by his conſtant oppoſition diſmounted and pulled down. And I am perſuaded there ſits in this court one whom God doth the rather bleſs for being his Majeſty's inſtrument in that ſervice.

I cannot remember religion and the church, but I muſt think of the ſeed-plots of the ſame, which are the univerſities. His Majeſty, as for learning amongſt Kings, he is incomparable in his perſon; ſo likewiſe hath he been in his government a benign or benevolent planet towards learning: by whoſe influence thoſe nurſeries and gardens of learning (the univerſities) were never more in flower nor fruit.

For the maintaining of the laws, which is the hedge and fence about the liberty of the ſubject, I may truly affirm it was never in better repair. He doth concur with the votes of the nobles; *Nolumus leges Angliae mutare.* He is an enemy of innovation. Neither doth the univerſality of his own knowledge carry him to neglect or paſs over the very forms of the laws of the land. Neither was there ever King, I am perſuaded, that did conſult ſo oft with his judges, as my lords that ſit here know well. The judges are a kind of council of the King's by oath and ancient inſtitution; but he uſeth them ſo indeed: he confers regularly with them upon their returns from their viſitations and circuits: he gives them liberty, both to imform him, and to debate matters with him; and in the fall and concluſion commonly relies on their opinions.

As for the uſe of the prerogative, it runs within the ancient channels and banks: ſome things that were conceived to be in ſome proclamations, commiſſions, and patents, as overflows, have been by his wiſdom and care reduced; whereby, no doubt, the main channel of his prerogative is ſo much the ſtronger. For evermore overflows do hurt the channel.

As for adminiſtration of juſtice between party and party, I pray obſerve theſe points. There is no news of great ſeal or ſignet that flies abroad for countenance or delay of cauſes; protections rarely granted, and only upon great ground, or by conſent. My lords here of the council, and the King himſelf meddle not (as hath been uſed in former times) with matters of *meum* and *tuum*, except they have apparent mixture with matters of eſtate, but leave them to the King's courts of law or equity. And for mercy and grace (without which there is no ſtanding before juſtice) we ſee, the King now hath reigned twelve years in his white robe, without almoſt any aſperſion of the crimſon dye of blood. There ſits my Lord Hobart, that ſerved attorney ſeven years. I ſerved with him. We were ſo happy, as there paſſed not through our hands any one arraignment for treaſon; and but one for any capital offence, which was that of the Lord Sanquhar; the nobleſt piece of juſtice (one of them) that ever came forth in any King's time.

As

As for penal laws, which lie as ſnares upon the ſubjects, and which were as a *nemo ſcit* to King Henry VII; it yields a revenue that will ſcarce pay for the parchment of the King's records at Weſtminſter.

And laſtly for peace, we ſee manifeſtly his Majeſty bears ſome reſemblance of that great name, *a Prince of peace:* he hath preſerved his ſubjects during his reign in peace, both within and without. For the peace with ſtates abroad, we have it *uſque ad ſatietatem:* and for peace in the lawyers phraſe, which count treſpaſſes, and forces, and riots, to be *contra pacem*; let me give your lordſhips this token or taſte, that this court, where they ſhould appear, had never leſs to do. And certainly there is no better ſign of *omnia bene*, than when this court is in a ſtill.

But, my lords, this is a ſea of matter; and therefore I muſt give it over, and conclude, that there was never King reigned in this nation that did better keep covenant in preſerving the liberties and procuring the good of his people: ſo that I muſt needs ſay for the ſubjects of England,

O fortunatos nimium ſua ſi bona nôrint;

as no doubt they do both know and acknowledge it; whatſoever a few turbulent diſcourſers may, through the lenity of the time, take boldneſs to ſpeak.

And as for this particular, touching the benevolence, wherein Mr. I. S. doth aſſign this breach of covenant, I leave it to others to tell you what the King may do, or what other Kings have done; but I have told you what our King and my lords have done: which, I ſay, and ſay again, is ſo far from introducing a new precedent, as it doth rather correct, and mollify, and qualify former precedents.

Now, Mr. I. S. let me tell you your fault in few words: for that I am perſuaded you ſee it already, though I woo no man's repentance; but I ſhall, as much as in me is, cheriſh it where I find it. Your offence hath three parts knit together:

Your ſlander,
Your menace, and
Your compariſon.

For your ſlander, it is no leſs than that the King is perjured in his coronation oath. No greater offence than perjury; no greater oath than that of a coronation. I leave it; it is too great to aggravate.

Your menace, that if there were a Bullingbroke, or I cannot tell what, there were matter for him, is a very ſeditious paſſage. You know well, that howſoever Henry the Fourth's act, by a ſecret providence of God, prevailed, yet it was but an uſurpation; and if it were poſſible for ſuch a one to be this day (wherewith it ſeems your dreams are troubled) I do not doubt, his end would be upon the block; and that he would ſooner have the ravens ſit upon his head at London-bridge, than the crown at Weſtminſter. And it is not your interlacing of your "God forbid," that will ſalve theſe ſeditious ſpeeches: neither could it be a fore-warning, becauſe the matter was paſt and not revocable, but a very ſtirring up and incenſing of the people. If I ſhould ſay to you (for example) "If theſe times "were like ſome former times, of King Henry VIII. or ſome other times which "God forbid, Mr. I. S. it would coſt you your life;" I am ſure you would not think this to be a gentle warning, but rather that I incenſed the court againſt you.

And for your compariſon with Richard II. I ſee, you follow the example of them that brought him upon the ſtage, and into print, in Queen Elizabeth's time, a moſt prudent and admirable Queen. But let me intreat you, that when you will ſpeak of Queen Elizabeth or King James, you would compare them to King Henry VII. or King Edward I. or ſome other parallels to which they are alike. And this I would wiſh both you and all to take heed of, how you ſpeak ſeditious matter in parables, or by tropes or examples. There is a thing in an indictment called an innuendo; you muſt beware how you beckon or make ſigns upon the King in a dangerous ſenſe: but I will contain myſelf and preſs this no farther. I may hold you for turbulent or preſumptuous; but I hope you are not diſloyal: you are graciouſly and mercifully dealt with. And therefore having now opened to my lords, and (as I think) to your own heart and conſcience, the principal part of your offence (which concerns the King) I leave the reſt, which concerns the law, parliament, and the ſubjects that have given, to Mr. Serjeant and Mr. Solicitor.

THE CHARGE OF OWEN, indicted of High Treason, in the King's Bench.

BY

Sir FRANCIS BACON, Knight, His Majesty's Attorney-General.

THE treason wherewith this man standeth charged, is for the kind and nature of it ancient, as ancient as there is any law of England; but in the particular, late and upstart: and again, in the manner and boldness of the present case, new and almost unheard of till this man. Of what mind he is now, I know not; but I take him as he was, and as he standeth charged. For high treason is not written in ice; that when the body relenteth, the impression should go away.

In this cause the evidence itself will spend little time: time therefore will be best spent in opening fully the nature of this treason, with the circumstances thereof; because the example is more than the man. I think good therefore by way of inducement and declaration in this cause to open unto the court, jury and hearers, five things.

The first is the clemency of the King; because it is news, and a kind of rarity to have a proceeding in this place upon treason: and perhaps it may be marvelled by some, why after so long an intermission it should light upon this fellow; being a person but contemptible, a kind of venomous fly, and a hang-by of the seminaries.

The second is, the nature of this treason, as concerning the fact, which of all kinds of compassing the King's death, I hold to be the most perilous, and as much differing from other conspiracies, as the lifting up of a thousand hands against the King (like the giant Briareus) differs from lifting up one or a few hands.

The third point that I will speak unto is the doctrine or opinion, which is the ground of this treason; wherein I will not argue or speak like a divine or scholar, but as a man bred in a civil life: and to speak plainly, I hold the opinion to be such that deserveth rather detestation than contestation.

The fourth point is the degree of this man's offence, which is more presumptuous than I have known any other to have fallen into in this kind, and hath a greater overflow of malice and treason.

And fifthly, I will remove somewhat that may seem to qualify and extenuate this man's offence; in that he hath not affirmed simply that it is lawful to kill the King, but conditionally; that if the King be excommunicate, it is lawful to kill him: which maketh little difference either in law or peril.

For the King's clemency, I have said it of late upon a good occasion, and I still speak it with comfort: I have now served his Majesty's solicitor and attorney eight years and better; yet this is the first time that ever I gave in evidence against a traytor at this bar or any other. There hath not wanted matter in that party of the subjects whence this kind of offence floweth, to irritate the King: he hath been irritated by the powder of treason, which might have turned judgment into fury. He hath been irritated by wicked and monstrous libels; irritated by a general insolency and presumption in the Papists throughout the land; and yet I see his Majesty keepeth Cæsar's rule: *Nil malo, quàm eos esse similes sui, et me mei.* He leaveth them to be like themselves; and he remaineth like himself, and striveth to overcome evil with goodness. A strange thing, bloody opinions,

bloody

bloody doctrines, bloody examples, and yet the government ſtill unſtained with blood. As for this Owen that is brought in queſtion, though his perſon be in his condition contemptible; yet we ſee by miſerable examples, that theſe wretches which are but the ſcum of the earth, have been able to ſtir earthquakes by murthering of princes: and if it were in caſe of contagion (as this is a contagion of the heart and ſoul) a raſcal may bring in a plague into the city as well as a great man: ſo it is not the perſon, but the matter that is to be conſidered.

For the treaſon itſelf, which is the ſecond point, my deſire is to open it in the depth thereof, if it were poſſible; but it is bottomleſs: and ſo the civil law ſaith, *Conjurationes omnium proditionum odioſiſſimae et perniciosiſſimae.* Againſt hoſtile invaſions and the adherence of ſubjects to enemies, Kings can arm. Rebellions muſt go over the bodies of many good ſubjects before they can hurt the King: but conſpiracies againſt the perſons of Kings are like thunder-bolts that ſtrike upon the ſudden, hardly to be avoided. *Major metus a ſingulis* (ſaith he) *quam ab univerſis.* There is no preparation againſt them: and that preparation, which may be of guard or cuſtody, is a perpetual miſery. And therefore they that have written of the privileges of ambaſſadors and of the amplitude of ſafe-conducts, have defined, that if an ambaſſador or a man that cometh in upon the higheſt ſafe-conducts, do practiſe matter of ſedition in a ſtate, yet by the law of nations he ought to be remanded; but if he conſpire againſt the life of a prince by violence or poiſon, he is to be juſticed: *Quia odium eſt omni privilegio majus.* Nay, even amongſt enemies, and in the moſt deadly wars, yet nevertheleſs conſpiracy and aſſaſſination of princes hath been accounted villainous and execrable.

The manners of conſpiring and compaſſing the King's death are many: but it is moſt apparent, that amongſt all the reſt this ſurmounteth. Firſt, becauſe it is grounded upon pretenced religion; which is a trumpet that inflameth the heart and powers of a man with daring and reſolution more than any thing elſe. Secondly, it is the hardeſt to be avoided: for when a particular conſpiracy is plotted or attempted againſt a King by ſome one or ſome few conſpirators, it meets with a number of impediments. Commonly he that hath the head to deviſe it, hath not the heart to undertake it: and the perſon that is uſed, ſometimes faileth in courage; ſometimes faileth in opportunity; ſometimes is touched with remorſe. But to publiſh and maintain, that it may be lawful for any man living to attempt the life of a King, this doctrine is a venomous ſop; or, as a legion of malign ſpirits, or an univerſal temptation, doth enter at once into the hearts of all that are any way prepared, or of any prediſpoſition to be traytors: ſo that whatſoever faileth in any one, is ſupplied in many. If one man faint, another will dare; if one man hath not the opportunity, another hath: if one man relent, another will be deſperate. And thirdly, particular conſpiracies have their periods of time, within which if they be not taken, they vaniſh; but this is endleſs, and importeth perpetuity of ſpringing conſpiracies. And ſo much concerning the nature of the fact.

For the third point, which is the doctrine; that upon an excommunication of the Pope, with ſentence of depoſing, a King by any ſon of Adam may be ſlaughtered; and that it is juſtice and no murther; and that their ſubjects are abſolved of their allegiance, and the Kings themſelves expoſed to ſpoil and prey. I ſaid before, that I would not argue the ſubtlety of the queſtion: it is rather to be ſpoken to by way of accuſation of the opinion as impious, than by way of diſpute of it as doubtful. Nay, I ſay it deſerveth rather ſome holy war or league amongſt all Chriſtian princes of either religion for the extirpating and razing of the opinion, and the authors thereof, from the face of the earth, than the ſtyle of pen or ſpeech. Therefore in this kind I will ſpeak to it a few words, and not otherwiſe. Nay, I proteſt, if I were a Papiſt I ſhould ſay as much: nay, I ſhould ſpeak it perhaps with more indignation and feeling. For this horrible opinion is our advantage, and it is their reproach, and will be their ruin.

This monſter of opinion is to be accuſed of three moſt evident and moſt miſerable ſlanders.

Firſt, Of the ſlander it bringeth to the Chriſtian faith, being a plain plantation of irreligion and atheiſm.

Secondly,

Secondly, The ſubverſion which it introduceth into all policy and government.

Thirdly, The great calamity it bringeth upon Papiſts themſelves; of which the more moderate ſort, as men miſled, are to be pitied.

For the firſt, if a man doth viſit the foul and polluted opinions, cuſtoms, or practices of heatheniſm, mahometiſm, and hereſy, he ſhall find they do not attain to this height. Take the examples of damnable memory amongſt the Heathen. The proſcriptions in Rome of Sylla, and afterwards of the Triumvirs, what were they? They were but of a finite number of perſons, and thoſe not many that were expoſed unto any man's ſword. But what is that to the proſcribing of a King, and all that ſhall take his part? And what was the reward of a ſoldier that amongſt them killed one of the proſcribed? A ſmall piece of money. But what is now the reward of one that ſhall kill a King? The kingdom of heaven. The cuſtom among the Heathen that was moſt ſcandalized was, that ſometimes the prieſt ſacrificed men; but yet you ſhall not read of any prieſthood that ſacrificed Kings.

The Mahometans make it a part of their religion to propagate their ſect by the ſword; but yet ſtill by honourable wars, never by villainies and ſecret murthers. Nay, I find that the Saracen prince, of whom the name of the aſſaſſins is derived, which had divers votaries at commandment, which he ſent and employed to the killing of divers princes in the eaſt (by one of whom Amurath the firſt was ſlain, and Edward the firſt of England was wounded) was put down and rooted out by common conſent of the Mahometan princes.

The Anabaptiſts (it is true) come neareſt. For they profeſs the pulling down of magiſtrates: and they can chaunt the pſalm, *To bind their Kings in chains, and their nobles in fetters of iron.* This is the glory of the ſaints, much like the temporal authority that the Pope challengeth over princes. But this is the difference, that that is a furious and fanatical fury, and this is a ſad and ſolemn miſchief: he *imagineth miſchief as a law*; a law-like miſchief.

As for the defence which they do make, it doth aggravate the ſin, and turneth it from a cruelty towards man to a blaſphemy towards God. For to ſay that all this is *in ordine ad ſpirituale*, and to a good end, and for the ſalvation of ſouls, it is directly to make God author of evil, and to draw him in the likeneſs of the prince of darkneſs; and to ſay with thoſe that Saint Paul ſpeaketh of, *Let us do evil that good may come thereof*; of whom the apoſtle ſaith definitively, *that their damnation is juſt.*

For the deſtroying of government univerſally, it is moſt evident, that it is not the caſe of proteſtant princes only, but of catholick princes likewiſe; as the King hath excellently ſet forth. Nay, it is not the caſe of princes only, but of all ſubjects and private perſons. For touching princes, let hiſtory be peruſed, what hath been the cauſes of excommunication; and namely, this tumour of it (the depoſing of Kings;) it hath not been for hereſy and ſchiſm alone, but for collation and inveſtitures of biſhopricks and benefices, intruding upon eccleſiaſtical poſſeſſions, violating of any eccleſiaſtical perſon or liberty. Nay, generally they maintain it, that it may be for any ſin: ſo that the difference wherein their doctors vary, that ſome hold that the Pope hath his temporal power immediately, and others but *in ordine ad ſpirituale*, is but a deluſion and an abuſe. For all cometh to one. What is there that may not be made ſpiritual by conſequence; eſpecially when he that giveth the ſentence may make the caſe? and accordingly hath the miſerable experience followed. For this murthering of Kings hath been put in practice, as well againſt papiſt Kings as proteſtant: ſave that it hath pleaſed God ſo to guide it by his admirable providence, as the attempts upon papiſt princes have been executed, and the attempts upon proteſtant princes have failed, except that of the Prince of Orange: and not that neither, until ſuch time as he had joined too faſt with the Duke of Anjou and the papiſts. . . . . .

The reſt is wanting.

THE

THE CHARGE OF Sir FRANCIS BACON, Knight, The KING's Attorney-General, AGAINST Mr. LUMSDEN, Sir JOHN WENTWORTH, and Sir JOHN HOLLES, for ſcandal and traducing of the King's juſtice in the proceedings againſt WESTON, in the Star-Chamber, 10 Novemb. 1615.

THE offence wherewith I ſhall charge the three offenders at the bar, is a miſdemeanor of a high nature, tending to the defacing and ſcandal of juſtice in a great cauſe capital. The particular charge is this:

The King amongſt many his princely virtues is known to excel in that proper virtue of the imperial throne, which is juſtice. It is a royal virtue, which doth employ the other three cardinal virtues in her ſervice: wiſdom to diſcover, and diſcern nocent or innocent; fortitude to proſecute and execute; temperance, ſo to carry juſtice as it be not paſſionate in the purſuit, nor confuſed in involving perſons upon light ſuſpicion, nor precipitate in time. For this his Majeſty's virtue of juſtice God hath of late raiſed an occaſion, and erected as it were a ſtage or theatre, much to his honour, for him to ſhew it, and act it in the purſuit of the untimely death of Sir Thomas Overbury, and therein cleanſing the land from blood. For, my lords, if blood ſpilt pure doth cry to heaven in God's ears, much more blood defiled with poiſon.

This great work of his Majeſty's juſtice, the more excellent it is, your lordſhips will ſoon conclude the greater is the offence of any that have ſought to affront it or traduce it. And therefore, before I deſcend unto the charge of theſe offenders, I will ſet before your lordſhips the weight of that which they have ſought to impeach; ſpeaking ſomewhat of the general crime of impoiſonment, and then of the particular circumſtances of this fact upon Overbury; and thirdly and chiefly, of the King's great and worthy care and carriage in this buſineſs.

This offence of impoiſonment is moſt truly figured in that device or deſcription, which was made of the nature of one of the Roman tyrants, that he was *lutum ſanguine maceratum*, mire mingled or cemented with blood: for as it is one of the higheſt offences in guiltineſs, ſo it is the baſeſt of all others in the mind of the offenders. Treaſons *magnum aliquid ſpectant:* they aim at great things; but this is vile and baſe. I tell your lordſhips what I have noted, that in all God's book (both of the Old and New Teſtament) I find examples of all other offences and offenders in the world, but not any one of an impoiſonment or an impoiſoner. I find mention of fear of caſual impoiſonment: when the wild vine was ſhred into the pot, they came complaining in a fearful manner; Maſter, *mors in olla*. And I find mention of poiſons of beaſts and ſerpents; *the poiſon of aſps is under their lips*. But I find no example in the book of God of impoiſonment. I have ſometime thought of the words in the pſalm, *let their table be made a ſnare*. Which certainly is moſt true of impoiſonment; for the table, the daily bread, for which we pray, is turned to a deadly ſnare: but I think rather that that was meant of the treachery of friends that were participant of the ſame table.

But let us go on. It is an offence, my lords, that hath the two ſpurs of offending; *ſpes perficiendi*, and *ſpes celandi:* it is eaſily committed, and eaſily concealed.

It is an offence that is *tanquam ſagitta nocte volans*; it is the arrow that flies by night. It diſcerns not whom it hits: for many times the poiſon is laid for one, and the other takes it; as in Sander's caſe, where the poiſoned apple was laid for the mother, and was taken up by the child, and killed the child: and ſo in that

notorious caſe, whereupon the ſtatute of 22 Hen. VIII. cap. 9. was made, where the intent being to poiſon but one or two, poiſon was put into a little veſſel of barm that ſtood in the kitchen of the biſhop of Rocheſter's houſe; of which barm pottage or gruel was made, wherewith ſeventeen of the biſhop's family were poiſoned: nay, divers of the poor that came to the biſhop's gate, and had the broken pottage in alms, were likewiſe poiſoned. And therefore if any man will comfort himſelf, or think with himſelf, Here is great talk of impoiſonment, I hope I am ſafe; for I have no enemies; nor I have nothing that any body ſhould long for. Why, that is all one; for he may ſit at table by one for whom poiſon is prepared, and have a drench of his cup, or of his pottage. And ſo, as the poet ſaith, *concidit infelix alieno vulnere*; he may die another man's death. And therefore it was moſt gravely, and judiciouſly, and properly provided by that ſtatute, that impoiſonment ſhould be high treaſon; becauſe whatſoever offence tendeth to the utter ſubverſion and diſſolution of human ſociety, is in the nature of high treaſon.

Laſtly, It is an offence that I may truly ſay of it, *non eſt noſtri generis, nec ſanguinis.* It is (thanks be to God) rare in the iſle of Britain: it is neither of our country, nor of our church; you may find it in Rome or Italy. There is a region, or perhaps a religion for it: and if it ſhould come amongſt us, certainly it were better living in a wilderneſs, than in a court.

For the particular fact upon Overbury. Firſt, for the perſon of Sir Thomas Overbury: I knew the gentleman. It is true, his mind was great, but it moved not in any good order; yet certainly it did commonly fly at good things; and the greateſt fault that I ever heard of him, was, that he made his friend his idol. But I leave him as Sir Thomas Overbury.

But take him as he was the King's priſoner in the Tower; and then ſee how the caſe ſtands. In that place the ſtate is as it were reſpondent to make good the body of a priſoner. And if any thing happen to him there, it may (though not in this caſe, yet in ſome others) make an aſperſion and reflection upon the ſtate itſelf. For the perſon is utterly out of his own defence; his own care and providence can ſerve him nothing. He is in cuſtody and preſervation of law; and we have a maxim in our law (as my lords the judges know) that when a ſtate is in preſervation of law, nothing can deſtroy it, or hurt it. And God forbid but the like ſhould be for the perſons of thoſe that are in cuſtody of law; and therefore this was a circumſtance of great aggravation.

Laſtly, To have a man chaſed to death in ſuch manner (as it appears now by matter of record; for other privacy of the cauſe I know not) by poiſon after poiſon, firſt roſeaker, then arſenick, then mercury ſublimate, then ſublimate again; it is a thing would aſtoniſh man's nature to hear it. The poets feign, that the Furies had whips, that they were corded with poiſonous ſnakes; and a man would think that this were the very caſe, to have a man tied to a poſt, and to ſcourge him to death with ſnakes: for ſo may truly be termed diverſity of poiſons.

Now I will come to that which is the principal; that is, his Majeſty's princely, yea, and as I may truly term it, ſacred proceeding in this cauſe. Wherein I will firſt ſpeak of the temper of his juſtice, and then of the ſtrength thereof.

Firſt, It pleaſed my lord Chief Juſtice to let me know (that which I heard with great comfort) which was the charge that his Majeſty gave to himſelf firſt, and afterwards to the commiſſioners in this caſe, worthy certainly to be written in letters of gold, wherein his Majeſty did forerank and make it his prime direction, that it ſhould be carried, without touch to any that was innocent; nay more, not only without impeachment, but without aſperſion: which was a moſt noble and princely caution from his Majeſty; for mens reputations are tender things, and ought to be like Chriſt's coat, without ſeam. And it was the more to be reſpected in this caſe, becauſe it met with two great perſons; a nobleman that his Majeſty had favoured and advanced, and his lady being of a great and honourable houſe: though I think it be true, that the writers ſay, That there is no pomegranate ſo fair or ſo ſound, but may have a periſhed kernel. Nay, I ſee plainly, that in thoſe excellent papers of his Majeſty's own hand writing, being as ſo many beams of juſtice iſſuing from that virtue which doth ſhine in

him; I ſay, I ſee it was ſo evenly carried without prejudice (whether it were a true accuſation of the one part, or a practice of a falſe accuſation on the other) as ſhewed plainly that his Majeſty's judgment was *tanquam tabula raſa*, as a clean pair of tables, and his ear *tanquam janua aperta*, as a gate not ſide open, but wide open to truth, as it ſhould be by little and little diſcovered. Nay, I ſee plainly, that at the firſt (till farther light did break forth) his Majeſty was little moved with the firſt tale, which he vouchſafeth not ſo much as the name of a tale; but calleth it a rumour, which is an heedleſs tale.

As for the ſtrength or reſolution of his Majeſty's juſtice, I muſt tell your lordſhips plainly; I do not marvel to ſee Kings thunder out juſtice in caſes of treaſon, when they are touched themſelves; and that they are *vindices doloris proprii*: but that a King ſhould, *pro amore juſtitiae* only, contrary to the tide of his own affection, for the preſervation of his people, take ſuch care of a cauſe of juſtice, that is rare and worthy to be celebrated far and near. For, I think, I may truly affirm, that there was never in this kingdom, nor in any other kingdom, the blood of a private gentleman vindicated *cum tanto motu regni*, or to ſay better, *cum tanto plauſu regni*. If it had concerned the King or Prince, there could not have been greater nor better commiſſioners to examine it. The term hath been almoſt turned into a *juſtitium*, or vacancy; the people themſelves being more willing to be lookers on in this buſineſs, than to follow their own. There hath been no care of diſcovery omitted, no moment of time loſt. And therefore I will conclude this part with the ſaying of Solomon, *Gloria Dei celare rem, et gloria Regis ſcrutari rem.* And his Majeſty's honour is much the greater for that he hath ſhewed to the world in this buſineſs as it hath relation to my lord of Somerſet (whoſe caſe in no ſort I do prejudge, being ignorant of the ſecrets of the cauſe, but taking him as the law takes him hitherto, for a ſubject) I ſay, the King hath to his great honour ſhewed, that were any man, in ſuch a caſe of blood, as the ſignet upon his right hand (as the Scripture ſays) yet would he pull him off.

Now will I come to the particular charge of theſe gentlemen, whoſe qualities and perſons I reſpect and love; for they are all my particular friends: but now I can only do this duty of a friend to them, to make them know their fault to the full.

And therefore, firſt, I will by way of narrative declare to your lordſhips the fact, with the occaſion of it; then you ſhall have their confeſſions read, upon which you are to proceed, together with ſome collateral teſtimonies by way of aggravation: and laſtly, I will note and obſerve to your lordſhips, the material points which I do inſiſt upon for their charge, and ſo leave them to their anſwer. And this I will do very briefly, for the caſe is not perplexed.

That wretched man Weſton, who was the actor or mechanical party in this impoiſonment, at the firſt day being indicted by a very ſubſtantial jury of ſelected citizens, to the number of nineteen, who found *billa vera*, yet nevertheleſs at the firſt ſtood mute: but after ſome days intermiſſion, it pleaſed God to caſt out the dumb devil, and that he did put himſelf upon his trial; and was by a jury alſo of great value, upon his confeſſion, and other teſtimonies, found guilty: ſo as thirty-one ſufficient jurors have paſſed upon him. Whereupon judgment and execution was awarded againſt him. After this, being in preparation for another world, he ſent for Sir Thomas Overbury's father, and falling down upon his knees, with great remorſe and compunction, aſked him forgiveneſs. Afterwards, again, of his own motion, deſired to have his like prayer of forgiveneſs recommended to his mother, who was abſent. And at both times, out of the abundance of his heart, confeſſed that he was to die juſtly, and that he was worthy of death. And after again at his execution (which is a kind of ſealing-time of confeſſions) even at the point of death (although there were tempters about him, as you ſhall hear by and by) yet he did again confirm publickly, that his examinations were true, and that he had been juſtly and honourably dealt with. Here is the narrative, which induceth the charge. The charge itſelf is this.

M. L. whoſe offence ſtands alone ſingle (the offence of the other two being in conſort; and yet all three meeting in their end and center, which was to interrupt

interrupt or deface this excellent piece of juſtice:) M. L. I ſay, mean while between Weſton's ſtanding mute and his trial, takes upon him to make a moſt falſe, odious, and libellous relation, containing as many untruths, as lines, and ſets it down in writing with his own hand, and delivers it to Mr. Henry Gibb, of the bed-chamber, to be put into the King's hand; in which writing he doth falſify and pervert all that was done the firſt day at the arraignment of Weſton; turning the pike and point of his imputations principally upon my lord Chief Juſtice of England; whoſe name (thus occurring) I cannot paſs by, and yet I cannot ſkill to flatter. But this I will ſay of him, and I would ſay as much to ages, if I ſhould write a ſtory; that never man's perſon and his place were better met in a buſineſs, than my lord Coke and my lord Chief Juſtice, in the cauſe of Overbury.

Now, my lords, in this offence of M. L. for the particulars of theſe ſlanderous articles, I will obſerve them unto you when the writings and examinations are read; for I do not love to ſet the gloſs before the text. But in general I note to your lordſhips, firſt, the perſon of M. L. I know he is a Scots gentleman, and thereby more ignorant of our laws and forms: but I cannot tell whether this doth extenuate his fault in reſpect of ignorance, or aggravate it much, in reſpect of preſumption; that he would meddle in that that he underſtood not: but I doubt it came not out of his quiver; ſome other man's cunning wrought upon this man's boldneſs. Secondly, I may note unto you the greatneſs of the cauſe, wherein he being a private mean gentleman did preſume to deal. M. L. could not but know to what great and grave commiſſioners the King had committed this cauſe; and that his Majeſty in his wiſdom would expect return of all things from them to whoſe truſt he had committed this buſineſs. For it is the part of commiſſioners, as well to report the buſineſs, as to manage the buſineſs; and then his Majeſty might have been ſure to have had all things well weighed, and truly informed: and therefore it ſhould have been far from M. L. to have preſumed to have put forth his hand to ſo high and tender a buſineſs, which was not to be touched but by employed hands. Thirdly, I note to your lordſhips, that this infuſion of a ſlander into a King's ear, is of all forms of libels and ſlanders, the worſt. It is true, that Kings may keep ſecret their informations, and then no man ought to enquire after them, while they are ſhrined in their breaſt. But where a King is pleaſed that a man ſhall anſwer for his falſe information; there, I ſay, the falſe information to a King exceeds in offence the falſe information of any other kind; being a kind (ſince we are in matter of poiſon) of impoiſonment of a King's ear. And thus much for the offence of M. L.

For the offence of S. W. and H. I. which I ſaid was in conſort, it was ſhortly this. At the time and place of the execution of Weſton, to ſupplant his Chriſtian reſolution, and to ſcandalize the juſtice already paſt, and perhaps to cut off the thread of that which is to come; theſe gentlemen, with others, came mounted on horſeback, and in a ruffling and facing manner, put themſelves forward to re-examine Weſton upon queſtions: and what queſtions? Directly croſs to that that had been tried and judged. For what was the point tried? That Weſton had poiſoned Overbury. What was S. W's queſtion? Whether Weſton did poiſon Overbury or no? A contradictory directly: Weſton anſwered only, that he did him wrong; and turning to the ſheriff, ſaid, You promiſed me I ſhould not be troubled at this time. Nevertheleſs, he preſſed him to anſwer; ſaying he deſired to know it, that he might pray with him. I know not that S. W. is an eccleſiaſtick, that he ſhould cut any man from the communion of prayer. And yet for all this vexing of the ſpirit of a poor man, now in the gates of death; Weſton nevertheleſs ſtood conſtant, and ſaid, I die not unworthily; my lord Chief Juſtice hath my mind under my hand, and he is an honourable and juſt judge. This is S. W. his offence.

For H. I. he was not ſo much a queſtioniſt; but wrought upon the others queſtions, and like a kind of confeſſor, wiſhed him to diſcharge his conſcience, and to ſatisfy the world. What world? I marvel! it was ſure the world at Tyburn. For the world at Guild-hall, and the world at London, was ſatisfied before; *teſte* the bells that rung. But men have got a faſhion now-a-days, that

two

two or three buſy-bodies will take upon them the name of the world, and broach their own conceits, as if it were a general opinion. Well, what more? When they could not work upon Weſton, then H. I. in an indignation turned about his horſe (when the other was turning over the ladder) and ſaid, he was ſorry for ſuch a concluſion; that was, to have the ſtate honoured or juſtified: but others took and reported his words in another degree: but that I leave, ſeeing it is not confeſſed.

H. I. his offence had another appendix, before this in time; which was, that at the day of the verdict given up by the jury, he alſo would needs give his verdict, ſaying openly, that if he were of the jury, he would doubt what to do. Marry (he ſaith) he cannot tell well whether he ſpake this before the jury had given up the verdict, or after; wherein there is little gained. For whether H. I. were a pre-juror or a poſt-juror, the one was as to pre-judge the jury, the other as to taint them.

Of the offence of theſe two gentlemen in general, your lordſhips muſt give me leave to ſay, that it is an offence greater and more dangerous than is conceived. I know well that as we have no Spaniſh inquiſitions, nor juſtice in a corner; ſo we have no gagging of mens mouths at their death; but that they may ſpeak freely at the laſt hour; but then it muſt come from the free motion of the party, not by temptation of queſtions. The queſtions that are to be aſked, ought to tend to farther revealing of their own or others guiltineſs; but to uſe a queſtion in the nature of a falſe interrogatory, to falſify that which is *res judicata*, is intolerable. For that were to erect a court or commiſſion of review at Tyburn, againſt the King's bench at Weſtminſter. And beſides, it is a thing vain and idle: for if they anſwer according to the judgment paſt, it adds no credit; or if it be contrary, it derogateth nothing: but yet it ſubjecteth the majeſty of juſtice to popular and vulgar talk and opinion.

My lords, theſe are great and dangerous offences; for if we do not maintain juſtice, juſtice will not maintain us.

But now your lordſhips ſhall hear the examinations themſelves, upon which I ſhall have occaſion to note ſome particular things, *etc.*

Given May 24. 1616.

THE CHARGE, by way of evidence,

BY

Sir FRANCIS BACON, Knight,

His MAJESTY's Attorney-General,

Before the lord High Steward, and the Peers †;

† The Lord Chancellor Egerton, Lord Ellesmere, and Earl of Bridgwater.

AGAINST

FRANCES, Countess of SOMERSET,

Concerning the poisoning of Sir THOMAS OVERBURY.

It may please your grace, my lord High Steward of England, and you my lords the peers:

I Am very glad to hear this unfortunate lady doth take this course, to confess fully and freely, and thereby to give glory to God and to justice. It is (as I may term it) the nobleness of an offender to confess; and therefore those meaner persons, upon whom justice passed before, confessed not; she doth. I know your lordships cannot behold her without compassion: many things may move you, her youth, her person, her sex, her noble family; yea, her provocations (if I should enter into the cause itself) and furies about her; but chiefly her penitency and confession. But justice is the work of this day; the mercy-seat was in the inner part of the temple; the throne is publick. But since this lady hath by her confession prevented my evidence, and your verdict, and that this day's labour is eased; there resteth, in the legal proceeding, but for me to pray that her confession may be recorded, and judgment thereupon.

But because your lordships the peers are met, and that this day and to-morrow are the days that crown all the former justice; and that in these great cases it hath been ever the manner to respect honour and satisfaction, as well as the ordinary parts and forms of justice; the occasion itself admonisheth me to give your lordships and the hearers this contentment, as to make declaration of the proceedings of this excellent work of the King's justice, from the beginning to the end.

It may please your grace, my lord High Steward of England: this is now the second time, within the space of thirteen years reign of our happy sovereign, that this high tribunal seat (ordained for the trial of peers) hath been opened and erected, and that with a rare event, supplied and exercised by one and the same person, which is a great honour unto you, my lord Steward.

In all this mean time the King hath reigned in his white robe, not sprinkled with any one drop of the blood of any of his nobles of this kingdom. Nay, such have been the depths of his mercy, as even those noblemens bloods (against whom the proceeding was at Winchester) Cobham and Grey, were attainted and corrupted, but not spilt or taken away; but that they remained rather spectacles of justice in their continual imprisonment, than monuments of justice in the memory of their suffering.

It is true that the objects of his justice then and now were very differing: for then it was the revenge of an offence against his own person and crown, and upon persons that were male-contents, and contraries to the state and government; but now it is the revenge of the blood and death of a particular subject, and the cry of a prisoner: it is upon persons that were highly in his favour; whereby his Majesty, to his great honour, hath shewed to the world, as if it were written in a sun-beam, that he is truly the lieutenant of him with whom there is no respect of persons; that his affections royal, are above his affections private; that his favours and nearness about him are not like popish sanctuaries, to privilege malefactors; and that his being the best master in the world doth not let him from being the best King in the world. His people, on the other side, may say to themselves,

themſelves, I will lie down in peace, for God, the King, and the Law, protect me againſt great and ſmall. It may be a diſcipline alſo to great men, eſpecially ſuch as are ſwoln in their fortunes from ſmall beginnings, that the King is as well able to level mountains, as to fill valleys, if ſuch be their deſert.

But to come to the preſent caſe: The great frame of juſtice (my lords) in this preſent action, hath a vault, and hath a ſtage; a vault, wherein theſe works of darkneſs were contrived; and a ſtage, with ſteps, by which it was brought to light.

For the former of theſe, I will not lead your lordſhips into it, becauſe I will engrieve nothing againſt a penitent; neither will I open any thing againſt him that is abſent. The one I will give to the laws of humanity, and the other to the laws of juſtice: for I ſhall always ſerve my maſter with a good and ſincere conſcience, and, I know, that he accepteth beſt. Therefore I will reſerve that till to-morrow, and hold myſelf to that which I called the ſtage or theatre, whereunto indeed it may be fitly compared: for that things were firſt contained within the inviſible judgments of God, as within a curtain, and after came forth, and were acted moſt worthily by the King, and right well by his miniſters.

Sir Thomas Overbury was murthered by poiſon, September 15, 1613. This foul and cruel murder did for a time cry ſecretly in the ears of God; but God gave no anſwer to it, otherwiſe than by that voice (which ſometime he uſeth) which is *vox populi*, the ſpeech of the people: for there went then a murmur that Overbury was poiſoned; and yet the ſame ſubmiſs and low voice of God (the ſpeech of the vulgar people) was not without a counter-tenor or counter-blaſt of the devil, who is the common author both of murder and ſlander; for it was given out that Overbury was dead of a foul diſeaſe; and his body (which they had made *corpus Judaicum* with their poiſons, ſo as it had no whole part) muſt be ſaid to be leproſed with vice, and ſo his name poiſoned as well as his body. For as to diſſoluteneſs, I have not heard the gentleman noted with it; his faults were of inſolency, turbulency, and the like of that kind.

Mean time there was ſome induſtry uſed (of which I will not now ſpeak) to lull aſleep thoſe that were the revengers of the blood, the father and the brother of the murdered. And in theſe terms things ſtood by the ſpace of two years, during which time God did ſo blind the two great procurers, and dazzle them with their greatneſs, and blind and nail faſt the actors and inſtruments with ſecurity upon their protection, as neither the one looked about them, nor the other ſtirred or fled, or were conveyed away, but remained here ſtill, as under a privy arreſt of God's judgments; inſomuch as Franklin, that ſhould have been ſent over to the Palſgrave with good ſtore of money, was by God's providence, and the accident of a marriage of his, diverted and ſtayed.

But about the beginning of the progreſs the laſt ſummer, God's judgments began to come out of their depths. And as the revealing of murder is commonly ſuch as a man ſaid, *a Domino hoc factum eſt; it is God's work, and it is marvellous in our eyes:* ſo in this particular it was moſt admirable; for it came forth firſt by a complement, a matter of courteſy. My lord of Shrewſbury, that is now with God, recommended to a counſellor of ſtate (of ſpecial truſt by his place) the late lieutenant Helwiſſe*, only for acquaintance, as an honeſt and worthy gentleman, and deſired him, to know him, and to be acquainted with him. That counſellor anſwered him civilly, that my lord did him a favour, and that he ſhould embrace it willingly; but he muſt let his lordſhip know, that there did lie a heavy imputation upon that gentleman, Helwiſſe; for that Sir Thomas Overbury, his priſoner, was thought to have come to a violent and an untimely death. When this ſpeech was reported back by my lord of Shrewſbury to Helwiſſe, *percuſſit illico animum*, he was ſtrucken with it: and being a politick man, and of likelihood doubting that the matter would break forth at one time or other, and that others might have the ſtart of him, and thinking to make his own caſe by his own tale, reſolved with himſelf upon this occaſion to diſcover unto my lord of Shrewſbury, and that counſellor, that there was an attempt (whereunto he was privy) to have poiſoned Overbury, by the hands

* Called in Sir H. Wotton's *Reliq.* p. 413. *Elvis.* In Sir A. Welden's *Court of K. James*, p. 107. *Elwaies.* In *Aulic. Coquin.* p. 141. *Ellowaies.* In Sir W. Dugdale's *Baron. of England*, Tom. ii. p. 425. *Elwayes.* In Baker, p. 434. *Yelvis.*

of

of his under-keeper, Weſton; but that he checked it, and put it by, and diſſuaded it. But then he left it thus, that it was but as an attempt, or an untimely birth, never executed; and as if his own fault had been no more, but that he was honeſt in forbidding, but fearful of revealing and impeaching, or accuſing great perſons: and ſo with this fine point thought to ſave himſelf.

But that counſellor of eſtate, wiſely conſidering that by the lieutenant's own tale it could not be ſimply a permiſſion or weakneſs; for that Weſton was never diſplaced by the lieutenant, notwithſtanding that attempt; and coupling the ſequel by the beginning, thought it matter fit to be brought before his Majeſty, by whoſe appointment Helwiſſe ſet down the like declaration in writing.

Upon this ground the King playeth Solomon's part, *Gloria Dei celare rem, et gloria Regis inveſtigare rem*, and ſets down certain papers of his own hand, which I might term to be *claves juſtitiae*, keys of juſtice; and may ſerve both for a precedent for Princes to imitate, and for a direction for judges to follow. And his Majeſty carried the balance with a conſtant and ſteady hand, evenly and without prejudice, whether it were a true accuſation of the one part, or a practice and factious ſcandal of the other: which writing, becauſe I am not able to expreſs according to the worth thereof, I will deſire your lordſhips anon to hear read.

This excellent foundation of juſtice being laid by his Majeſty's own hand, it was referred unto ſome counſellors to examine farther; who gained ſome degrees of light from Weſton, but yet left it imperfect.

After it was referred to Sir Edward Coke, Chief Juſtice of the King's bench, as a perſon beſt practiſed in legal examinations; who took a great deal of indefatigable pains in it without intermiſſion, having (as I have heard him ſay) taken at leaſt three hundred examinations in this buſineſs.

But theſe things were not done in a corner, I need not ſpeak of them. It is true that my lord Chief Juſtice, in the dawning and opening of the light, finding the matter touched upon theſe great perſons, very diſcreetly became ſuitor to the King, to have greater perſons than his own rank joined with him; whereupon your lordſhips, my lord High Steward of England, my lord Steward of the King's houſe, and my lord Zouch, were joined with him.

Neither wanted there (this while) practice to ſuppreſs teſtimony, to deface writings, to weaken the King's reſolution, to ſlander the juſtice, and the like. Nay, when it came to the firſt ſolemn act of juſtice, which was the arraignment of Weſton, he had his leſſon to ſtand mute, which had arreſted the whole wheel of juſtice, but this dumb devil, by the means of ſome diſcreet divines, and the potent charm of juſtice together, was caſt out; neither did this poiſonous adder ſtop his ear to theſe charms, but relented, and yielded to his trial.

Then followed the other proceedings of juſtice againſt the other offenders, Turner, Helwiſſe, Franklin.

But all theſe being but the organs and inſtruments of this fact (the actors, and not the authors) juſtice could not have been crowned without this laſt act againſt theſe great perſons; elſe Weſton's cenſure or prediction might have been verified, when he ſaid, he hoped the ſmall flies ſhould not be caught, and the greater eſcape. Wherein the King, being in great ſtraits between the defacing of his honour, and of his creature, hath (according as he uſed to do) choſen the better part, reſerving always mercy to himſelf.

The time alſo of juſtice hath had its true motions. The time until this lady's deliverance was due unto honour, chriſtianity, and humanity, in reſpect of her great belly. The time ſince was due to another kind of deliverance too; which was, that ſome cauſes of eſtate which were in the womb, might likewiſe be brought forth, not for matter of juſtice, but for reaſon of ſtate. Likewiſe this laſt procraſtination of days had the like weighty grounds and cauſes.

But (my lords) where I ſpeak of a ſtage, I doubt I hold you upon the ſtage too long. But before I pray judgment, I pray your lordſhips to hear the King's papers read, that you may ſee how well the King was inſpired, and how nobly he carried it, that innocency might not have ſo much as aſperſion.

Frances, counteſs of Somerſet, hath been indicted and arraigned, as acceſſary before the fact, for the murder and impoiſonment of Sir Thomas Overbury, and hath pleaded guilty, and confeſſeth the indictment: I pray judgment againſt the priſoner.

THE

THE CHARGE OF Sir FRANCIS BACON, Knight, His MAJESTY'S Attorney-General,

By Way of Evidence,

Before the Lord High Steward, and the Peers,

AGAINST

ROBERT, Earl of SOMERSET,

Concerning the poiſoning of OVERBURY.

It may pleaſe your grace, my lord High Steward of England, and you my lords the peers:

YOU have here before you Robert earl of Somerſet, to be tried for his life, concerning the procuring and conſenting to the impoiſonment of Sir Thomas Overbury, then the King's priſoner in the Tower of London, as an acceſſary before the fact.

I know your lordſhips cannot behold this nobleman, but you muſt remember his great favour with the King, and the great place that he hath had and born, and muſt be ſenſible that he is yet of your number and body, a peer as you are; ſo as you cannot cut him off from your body but with grief; and therefore that you will expect from us, that give in the King's evidence, ſound and ſufficient matter of proof to ſatisfy your honours and conſciences.

And for the manner of the evidence alſo, the King our maſter (who among his other virtues excelleth in that virtue of the imperial throne, which is juſtice) hath given us commandment that we ſhould not expatiate, nor make invectives, but materially purſue the evidence, as it conduceth to the point in queſtion; a matter, that though we are glad of ſo good a warrant, yet we ſhould have done of ourſelves: for far be it from us, by any ſtrains of wit or art to ſeek to play prizes, or to blazon our names in blood, or to carry the day otherwiſe than upon juſt grounds. We ſhall carry the lanthorn of juſtice (which is the evidence) before your eyes upright, and be able to ſave it from being put out by any winds of evaſions, or vain defences, that is our part; not doubting at all, but that this evidence in itſelf will carry that force as it ſhall little need vantages or aggravations.

My lords, the courſe which I ſhall hold in delivering that which I ſhall ſay (for I love order) is this:

Firſt, I will ſpeak ſomewhat of the nature and greatneſs of the offence which is now to be tried; and that the King, however he might uſe this gentleman heretofore, as the ſignet upon his finger (to uſe the Scripture-phraſe) yet in this caſe could not but put him off, and deliver him into the hands of juſtice.

Secondly, I will uſe ſome few words touching the nature of the proofs, which in ſuch a caſe are competent.

Thirdly, I will ſtate the proofs.

And laſtly, I will produce the proofs, either out of the examinations and matters in writing, or witneſſes *viva voce*.

For the offence itſelf, it is of crimes (next unto high treaſon) the greateſt; it is the fouleſt of felonies. And take this offence with the circumſtances, it hath three degrees or ſtages; that it is murder; that it is murder by impoiſonment; that it is murder committed upon the King's priſoner in the Tower: I might ſay, that it is murder under the colour of friendſhip; but that is a circumſtance moral; I leave that to the evidence itſelf.

For murder, my lords, the firſt record of juſtice which was in the world was a judgment upon murder in the perſon of Adam's firſt-born, Cain: and though it were not puniſhed by death, but with baniſhment and mark of ignominy, in reſpect of the primogeniture, or of the population of the world, or other points of God's ſecret will, yet it was adjudged, and was, as I ſaid, the firſt record of juſtice. So it appeareth likewiſe in Scripture, that the murder of Abner by Joab, though it were by David reſpited in reſpect of great ſervices paſt, or reaſon of ſtate, yet it was not forgotten. But of this I will ſay no more. It was ever admitted, and ſo ranked in God's own tables, that murder is of offences between man and man (next to treaſon and diſobedience of authority, which ſome divines have referred to the firſt table, becauſe of the lieutenancy of God in princes and fathers) the greateſt.

For impoiſonment, I am ſorry it ſhould be heard of in this kingdom: it is not *noſtri generis nec ſanguinis:* it is an Italian crime, fit for the court of Rome, where that perſon, that intoxicateth the Kings of the earth with his cup of poiſon in heretical doctrine, is many times really and materially intoxicated and impoiſoned himſelf.

But it hath three circumſtances, which make it grievous beyond other murders: whereof the firſt is, that it takes a man in full peace, in God's and the King's peace: he thinks no harm, but is comforting nature with refection and food; ſo that (as the Scripture ſaith) *his table is made a ſnare.*

The ſecond is, that it is eaſily committed, and eaſily concealed; and on the other ſide, hardly prevented, and hardly diſcovered: for murder by violence, princes have guards, and private men have houſes, attendants, and arms: neither can ſuch murders be committed but *cum ſonitu*, and with ſome overt and apparent act that may diſcover and trace the offender. But for poiſon, the ſaid cup itſelf of princes will ſcarce ſerve, in regard of many poiſons that neither diſcolour nor diſtaſte; and ſo paſſeth without noiſe or obſervation.

And the laſt is, becauſe it containeth not only the deſtruction of the maliced man, but of any other; *Quis modo tutus erit?* for many times the poiſon is prepared for one, and is taken by another: ſo that men die other mens deaths; *concidit infelix alieno vulnere:* and it is, as the pſalm calleth it, *ſagitta nocte volans; the arrow that flies by night*, it hath no aim or certainty.

Now for the third degree of this particular offence, which is, that it was committed upon the King's priſoner, who was out of his own defence, and merely in the King's protection, and for whom the King and ſtate was a kind of reſpondent; it is a thing that aggravates the fault much. For certainly, my lord of Somerſet, let me tell you this, that Sir Thomas Overbury is the firſt man that was murdered in the Tower of London, ſince the murder of the two young princes.

For the nature of the proofs, your lordſhips muſt conſider, that impoiſonment, of offences is the moſt ſecret; ſo ſecret, as if in all caſes of impoiſonment you ſhould require teſtimony, you were as good proclaim impunity: I will put book examples.

Who could have impeached Livia, by teſtimony, of the impoiſoning of the figs upon the tree, which her huſband was wont, for his pleaſure, to gather with his own hands?

Who could have impeached Pariſatis for the poiſoning of one ſide of the knife that ſhe carved with, and keeping the other ſide clean; ſo that herſelf did eat of the ſame piece of meat that the lady did that ſhe did impoiſon? The caſes are infinite (and indeed not fit to be ſpoken of) of the ſecrecy of impoiſonments; but wiſe triers muſt take upon them, in theſe ſecret caſes, Solo-

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mon's ſpirit, that, where there could be no witneſſes, collected the act by the affection.

But yet we are not to come to one caſe: for that which your lordſhips are to try, is not the act of impoiſonment (for that is done to your hand;) all the world by law is concluded to ſay, that Overbury was impoiſoned by Weſton.

But the queſtion before you is of the procurement only, and of the abetting (as the law termeth it) as acceſſary before the fact: which abetting is no more but to do or uſe any act or means, which may aid or conduce unto the impoiſonment.

So that it is not the buying or making of the poiſon, or the preparing, or confecting, or commixing of it, or the giving or ſending or laying the poiſon, that are the only acts that do amount unto abetment. But if there be any other act or means done or uſed to give the opportunity of impoiſonment, or to facilitate the execution of it, or to ſtop or divert any impediments that might hinder it, and this be with an intention to accompliſh and atchieve the impoiſonment; all theſe are abetments, and acceſſaries before the fact. I will put you a familiar example. Allow there be a conſpiracy to murder a man as he journeys by the way, and it be one man's part to draw him forth to that journey by invitation, or by colour of ſome buſineſs; and another takes upon him to diſſuade ſome friend of his, whom he had a purpoſe to take in his company, that he be not too ſtrong to make his defence; and another hath the part to go along with him, and to hold him in talk till the firſt blow be given: all theſe, my lords, without ſcruple are abettors to this murder, though none of them give the blow, nor aſſiſt to give the blow.

My lords, he is not the hunter alone that lets ſlip the dog upon the deer, but he that lodges the deer, or raiſes him, or puts him out, or he that ſets a toil that he cannot eſcape, or the like.

But this, my lords, little needeth in this preſent caſe, where there is ſuch a chain of acts of impoiſonment as hath been ſeldom ſeen, and could hardly have been expected, but that greatneſs of fortune maketh commonly groſſneſs in offending.

To deſcend to the proofs themſelves, I ſhall keep this courſe.

Firſt, I will make a narrative or declaration of the fact itſelf.

Secondly, I will break and diſtribute the proofs as they concern the priſoner.

And thirdly, according to that diſtribution, I will produce them, and read them, or uſe them.

So that there is nothing that I ſhall ſay, but your lordſhip, my lord of Somerſet, ſhall have three thoughts or cogitations to anſwer it: Firſt, when I open it, you may take your aim. Secondly, when I diſtribute it, you may prepare your anſwers without confuſion. And laſtly, when I produce the witneſſes or examinations themſelves, you may again ruminate and re-adviſe how to make your defence. And this I do the rather, becauſe your memory or underſtanding may not be oppreſſed or overladen with length of evidence, or with confuſion of order. Nay more, when your lordſhip ſhall make your anſwers in your time, I will put you in mind (when cauſe ſhall be) of your omiſſions.

Firſt, therefore, for the ſimple narrative of the fact. Sir Thomas Overbury for a time was known to have had great intereſt and great friendſhip with my lord of Somerſet, both in his meaner fortunes, and after: inſomuch as he was a kind of oracle of direction unto him; and, if you will believe his own vaunts, (being of an inſolent Thraſonical diſpoſition) he took upon him, that the fortune, reputation, and underſtanding of this gentleman (who is well known to have had a better teacher) proceeded from his company and counſel.

And this friendſhip reſted not only in converſation and buſineſs of court, but likewiſe in communication of ſecrets of eſtate. For my lord of Somerſet, at that time exerciſing (by his Majeſty's ſpecial favour and truſt) the office of the ſecretary proviſionally, did not forbear to acquaint Overbury with the King's pacquets of diſpatches from all parts, Spain, France, the Low Countries, *etc.* And this not by glimpſes, or now and then rounding in the ear for a favour, but in a ſettled manner: pacquets were ſent, ſometimes opened by my lord, ſometimes unbroken, unto Overbury, who peruſed them, copied, regiſtered them,

made tables of them as he thought good: ſo that, I will undertake, the time was when Overbury knew more of the ſecrets of ſtate than the council-table did. Nay, they were grown to ſuch an inwardneſs, as they made a play of all the world beſides themſelves: ſo as they had ciphers and jargons for the King, the Queen, and all the great men; things ſeldom uſed, but either by princes and their embaſſadors and miniſters, or by ſuch as work and practiſe againſt, or at leaſt upon, princes.

But underſtand me, my lord, I ſhall not charge you this day with any diſloyalty; only I ſay this for a foundation, that there was a great communication of ſecrets between you and Overbury, and that it had relation to matters of eſtate, and the greateſt cauſes of this kingdom.

But, my lords, as it is a principle in nature, that the beſt things are in their corruption the worſt, and the ſweeteſt wine makes the ſharpeſt vinegar; ſo fell it out with them, that this exceſs (as I may term it) of friendſhip ended in mortal hatred on my lord of Somerſet's part.

For it fell out, ſome twelve months before Overbury's impriſonment in the Tower, that my lord of Somerſet was entered into an unlawful love towards his unfortunate lady, then counteſs of Eſſex: which went ſo far, as it was then ſecretly projected (chiefly between my lord Privy Seal and my lord of Somerſet) to effect a nullity in the marriage with my lord of Eſſex, and ſo to proceed to a marriage with Somerſet.

This marriage and purpoſe did Overbury mainly oppugn, under pretence to do the true part of a friend (for that he counted her an unworthy woman;) but the truth was, that Overbury, who (to ſpeak plainly) had little that was ſolid for religion or moral virtue, but was a man poſſeſſed with ambition and vain-glory, was loth to have any partners in the favour of my lord of Somerſet, and eſpecially not the houſe of the Howards, againſt whom he had always profeſſed hatred and oppoſition: ſo all was but miſerable bargains of ambition.

And, my lords, that this is no ſiniſter conſtruction, will well appear unto you, when you ſhall hear that Overbury makes his brags to my lord of Somerſet, that he had won him the love of the lady by his letters and induſtry: ſo far was he from caſes of conſcience in this matter. And certainly, my lords, howſoever the tragical miſery of that poor gentleman Overbury ought ſomewhat to obliterate his faults; yet becauſe we are not now upon point of civility, but to diſcover the face of truth to the face of juſtice; and that it is material to the true underſtanding of the ſtate of this cauſe; Overbury was naught and corrupt, the ballads muſt be amended for that point.

But to proceed; when Overbury ſaw that he was like to be diſpoſſeſſed of my lord here, whom he had poſſeſſed ſo long, and by whoſe greatneſs he had promiſed himſelf to do wonders; and being a man of an unbounded and impetuous ſpirit, he began not only to diſſuade, but to deter him from that love and marriage; and finding him fixed, thought to try ſtronger remedies, ſuppoſing that he had my lord's head under his girdle, in reſpect of communication of ſecrets of eſtate, or (as he calls them himſelf in his letters) ſecrets of all natures; and therefore dealt violently with him, to make him deſiſt, with menaces of diſcovery of ſecrets, and the like.

Hereupon grew two ſtreams of hatred upon Overbury; the one, from the lady, in reſpect that he croſſed her love, and abuſed her name, which are furies to women; the other, of a deeper and more mineral nature, from my lord of Somerſet himſelf; who was afraid of Overbury's nature, and that if he did break from him and fly out, he would mine into him and trouble his whole fortunes.

I might add a third ſtream from the earl of Northampton's ambition, who deſires to be firſt in favour with my lord of Somerſet; and knowing Overbury's malice to himſelf and his houſe, thought that man muſt be removed and cut off. So it was amongſt them reſolved and decreed that Overbury muſt die.

Hereupon they had variety of devices. To ſend him beyond ſea, upon occaſion of employment, that was too weak; and they were ſo far from giving way to it, as they croſſed it. There reſted but two ways, quarrel or aſſault, and poiſon. For that of aſſault, after ſome propoſition and attempt, they paſſed

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from it; it was a thing too open, and ſubject to more variety of chances. That of poiſon likewiſe was a hazardous thing, and ſubject to many preventions and cautions; eſpecially to ſuch a jealous and working brain as Overbury had, except he were firſt faſt in their hands.

Therefore the way was firſt to get him into a trap, and lay him up, and then they could not miſs the mark. Therefore in execution of this plot it was deviſed, that Overbury ſhould be deſigned to ſome honourable employment in foreign parts, and ſhould under-hand by the lord of Somerſet be encouraged to refuſe it; and ſo upon that contempt he ſhould be laid priſoner in the Tower, and then they would look he ſhould be cloſe enough, and death ſhould be his bail. Yet were they not at their end. For they conſidered, that if there was not a fit lieutenant of the Tower for their purpoſe, and likewiſe a fit under-keeper of Overbury; firſt, they ſhould meet with many impediments in the giving and exhibiting the poiſon. Secondly, they ſhould be expoſed to note and obſervation that might diſcover them. And thirdly, Overbury in the mean time might write clamourous and furious letters to other his friends, and ſo all might be diſappointed. And therefore the next link of the chain was to diſplace the then lieutenant Waade, and to place Helwiſſe, a principal abettor in the impoiſonment: again, to diſplace Cary, that was the under-keeper in Waade's time, and to place Weſton, who was the principal actor in the impoiſonment: and this was done in ſuch a while (that it may appear to be done, as it were, with one breath) as there were but fifteen days between the commitment of Overbury, the diſplacing of Waade, the placing of Helwiſſe the diſplacing of Cary the under-keeper, the placing of Weſton, and the firſt poiſon given two days after.

Then when they had this poor gentleman in the Tower cloſe priſoner, where he could not eſcape nor ſtir, where he could not feed but by their hands, where he could not ſpeak nor write but through their trunks; then was the time to execute the laſt act of this tragedy.

Then muſt Franklin be purveyor of the poiſons, and procure five, ſix, ſeven ſeveral potions, to be ſure to hit his complexion. Then muſt Mrs. Turner be the ſay-miſtreſs of the poiſons to try upon poor beaſts, what is preſent, and what works at diſtance of time. Then muſt Weſton be the tormenter, and chaſe him with poiſon after poiſon; poiſon in ſalts, poiſon in meats, poiſon in ſweetmeats, poiſon in medicines and vomits, until at laſt his body was almoſt come, by uſe of poiſons, to the ſtate that Mithridates's body was by the uſe of treacle and preſervatives, that the force of the poiſons were blunted upon him: Weſton confeſſing, when he was chid for not diſpatching him, that he had given him enough to poiſon twenty men. Laſtly, becauſe all this aſked time, courſes were taken by Somerſet, both to divert all means of Overbury's delivery, and to entertain Overbury by continual letters, partly of hopes and projects for his delivery, and partly of other fables and negotiations; ſomewhat like ſome kind of perſons (which I will not name) which keep men in talk of fortune-telling, when they have a felonious meaning.

And this is the true narrative of this act of impoiſonment, which I have ſummarily recited.

Now for the diſtribution of the proofs, there are four heads of proofs to prove you guilty (my lord of Somerſet) of this impoiſonment; whereof two are precedent to the impriſonment, the third is preſent, and the fourth is following or ſubſequent. For it is in proofs as it is in lights; there is a direct light, and there is a reflexion of light, or back-light.

The firſt head or proof thereof is, That there was a root of bitterneſs, a mortal malice or hatred, mixed with deep and bottomleſs fears, that you had towards Sir Thomas Overbury.

The ſecond is, That you were the principal actor, and had your hand in all thoſe acts, which did conduce to the impoiſonment, and which gave opportunity and means to effect it; and without which the impoiſonment could never have been, and which could ſerve or tend to no other end but to the impoiſonment.

The third is, That your hand was in the very impoiſonment, itſelf, which is more than needs to be proved; that you did direct poiſon; that you did deliver poiſon; that you did continually hearken to the ſucceſs of the impoiſonment; and that you ſpurred it on, and called for diſpatch when you thought it lingered.

And laſtly, That you did all the things after the impoiſonment, which may detect a guilty conſcience, for the ſmothering of it, and avoiding puniſhment for it: which can be but of three kinds: That you ſuppreſſed, as much as in you was, teſtimony: That you did deface, and deſtroy, and clip and miſdate all writings that might give light to the impoiſonment; and that you did fly to the altar of guiltineſs, which is a pardon, and a pardon of murder, and a pardon for yourſelf, and not for your lady.

In this, my lord, I convert my ſpeech to you, becauſe I would have you attend the points of your charge, and ſo of your defence, the better. And two of theſe heads I have taken to myſelf, and left the other two to the King's two ſerjeants.

For the firſt main part, which is, the mortal hatred, coupled with fear, that was in my lord of Somerſet towards Overbury, although he did palliate it with a great deal of hypocriſy and diſſimulation even to the end; I ſhall prove it (my lord Steward, and you my lords the peers) manifeſtly, by matter both of oath and writing. The root of this hatred was that, that hath coſt many a man's life, that is, fear of diſcovering ſecrets: ſecrets, I ſay, of a high and dangerous nature: Wherein the courſe that I will hold, ſhall be this:

Firſt, I will ſhew that ſuch a breach and malice was between my lord and Overbury, and that it burſt forth into violent menaces and threats on both ſides.

Secondly, That theſe ſecrets were not light, but of a high nature; for I will give you the elevation of the pole. They were ſuch as my lord of Somerſet for his part had made a vow, that Overbury ſhould neither live in court nor country. That he had likewiſe opened himſelf and his own fears ſo far, that if Overbury ever came forth of the Tower, either Overbury or himſelf muſt die for it. And of Overbury's part, he had threatened my lord, that whether he did live or die, my lord's ſhame ſhould never die, but he would leave him the moſt odious man of the world. And farther, that my lord was like enough to repent it, in the place where Overbury wrote, which was the Tower of London. He was a true prophet in that: ſo here is the height of the ſecrets.

Thirdly, I will ſhew you, that all the King's buſineſs was by my lord put into Overbury's hands; ſo as there is work enough for ſecrets, whatſoever they were: and like princes confederates, they had their ciphers and jargons.

And laſtly, I will ſhew you that it is but a toy to ſay that the malice was only in reſpect he ſpake diſhonourably of the lady; or for doubt of breaking the marriage: for that Overbury was a co-adjutor to that love, and the lord of Somerſet was as deep in ſpeaking ill of the lady as Overbury. And again, it was too late for that matter, for the bargain of the match was then made and paſt. And if it had been no more but to remove Overbury from diſturbing of the match, it had been an eaſy matter to have banded over Overbury beyond ſeas, for which they had a fair way; but that would not ſerve their turn.

And laſtly, *periculum periculo vincitur*, to go ſo far as an impoiſonment, muſt have a deeper malice than flaſhes: for the cauſe muſt bear a proportion to the effect.

For the next general head of proofs, which conſiſts in acts preparatory to the middle acts, they are in eight ſeveral points of the compaſs, as I may term it.

Firſt, That there were devices and projects to diſpatch Overbury, or to overthrow him, plotted between the counteſs of Somerſet, the earl of Somerſet, and the earl of Northampton, before they fell upon the impoiſonment: for always before men fix upon a courſe of miſchief, there be ſome rejections: but die he muſt one way or other.

Secondly, That my lord of Somerſet was a principal practiſer (I muſt ſpeak it) in a moſt perfidious manner, to ſet a train or trap for Overbury to get him into the Tower; without which they never durſt have attempted the impoiſonment.

Thirdly,

Thirdly, That the placing of the lieutenant Helwiſſe one of the impoiſoners, and the diſplacing of Waade, was by the means of my lord of Somerſet.

Fourthly, That the placing of Weſton the under-keeper, who was the principal impoiſoner, and the diſplacing of Cary, and the doing of all this within fifteen days after Overbury's commitment, was by the means and countenance of my lord of Somerſet. And theſe two were the active inſtruments of the impoiſonment: and this was a buſineſs that the lady's power could not reach unto.

Fifthly, That becauſe there muſt be a time for the tragedy to be acted, and chiefly becauſe they would not have the poiſons work upon the ſudden; and for that the ſtrength of Overbury's nature, or the very cuſtom of receiving poiſon into his body, did overcome the poiſons, that they wrought not ſo faſt; therefore Overbury muſt be held in the Tower. And as my lord of Somerſet got him into the trap, ſo he kept him in, and abuſed him with continual hopes of liberty; and diverted all the true and effectual means of his liberty, and made light of his ſickneſs and extremities.

Sixthly, That not only the plot of getting Overbury into the Tower, and the devices to hold him and keep him there; but the ſtrange manner of his cloſe keeping (being in but for a contempt) was by the device and means of my lord of Somerſet, who denied his father to ſee him, denied his ſervants that offered to be ſhut up cloſe priſoners with him; and in effect handled it ſo, that he was cloſe priſoner to all his friends, and open and expoſed to all his enemies.

Seventhly, That the advertiſement which my lady received from time to time from the lieutenant or Weſton, touching Overbury's ſtate of body or health, were ever ſent up to the court, though it were in progreſs, and that from my lady: ſuch a thirſt and liſtening this lord had to hear that he was diſpatched.

Laſtly, There was a continual negotiation to ſet Overbury's head on work, that he ſhould make ſome recognition to clear the honour of the lady; and that he ſhould become a good inſtrument towards her and her friends: all which was but entertainment; for your lordſhips ſhall plainly ſee divers of my lord of Northampton's letters (whoſe hand was deep in this buſineſs) written (I muſt ſay it) in dark words and clauſes; that there was one thing pretended and another intended; that there was a real charge, and there was ſomewhat not real; a main drift, and a diſſimulation. Nay farther, there be ſome paſſages which the peers in their wiſdom will diſcern to point directly at the impoiſonment.

After this inducement followed the evidence itſelf.

The EFFECT of that which was ſpoken

BY THE

Lord Keeper of the Great Seal of England,

At the taking of his place in Chancery,

In performance of the charge his Majeſty had given him when he received the Seal, 1617.

BEFORE I enter into the buſineſs of the court, I ſhall take advantage of ſo many honourable witneſſes to publiſh and make known ſummarily, what charge the King's moſt excellent Majeſty gave me when I received the ſeal, and what orders and reſolutions myſelf have taken in conformity to that charge; that the King may have the honour of direction, and I the part of obedience; whereby your lordſhips, and the reſt of the preſence, ſhall ſee the whole time of my ſitting in the chancery (which may be longer or ſhorter, as pleaſe God and the King) contracted into one hour. And this I do for three cauſes.

Firſt, to give account to the King of his commandment.

Secondly, that I may be a guard and cuſtody to myſelf, and my own doings, that I do not ſwerve or recede from any thing that I have profeſſed in ſo noble company.

And thirdly, that all men that have to do with the chancery, or the ſeal, may know what they ſhall expect, and both ſet their hearts and my ears at reſt; not moving me to any thing againſt theſe rules; knowing that my anſwer is now turned from a *nolumus* into a *non poſſumus*. It is no more, I will not, but, I cannot, after this declaration.

And this I do alſo under three cautions.

The firſt is, that there be ſome things of a more ſecret and council-like nature, which are rather to be acted than publiſhed. But theſe things which I ſhall ſpeak of to-day are of a more publick nature.

The ſecond is, that I will not trouble this preſence with every particular, which would be too long; but ſelect thoſe things which are of greateſt efficacy, and conduce moſt *ad ſummas rerum*; leaving many other particulars to be ſet down in a publick table, according to the good example of my laſt predeceſſor, in his beginning.

And laſtly, that theſe imperatives, which I have made but to myſelf, and my times, be without prejudice to the authority of the court, or wiſer men that may ſucceed me: and chiefly that they are wholly ſubmitted unto the great wiſdom of my Sovereign (the abſoluteſt Prince in judicature that hath been in the chriſtian world;) for if any of theſe things which I intend to be ſubordinate to his directions, ſhall be thought by his Majeſty to be inordinate, I ſhall be moſt ready to reform them. Theſe things are but *tanquam album praetoris*; for ſo did the Roman prætors (which have the greateſt affinity with the juriſdiction of the chancellor here) who uſed to ſet down at their entrance, how they would uſe their juriſdiction. And this I ſhall do, my lords, in *verbis maſculis*; no flouriſhing or painted words, but ſuch as are fit to go before deeds.

The King's charge, which is my lanthorn, reſted upon four heads.

The firſt was, that I ſhould contain the juriſdiction of the court within its true and due limits, without ſwelling or exceſs.

The ſecond, that I ſhould think the putting of the great ſeal to letters patents was not a matter of courſe after precedent warrants; but that I ſhould take it to be the maturity and fullneſs of the King's intentions: and therefore that it was one of the greateſt parts of my truſt, if I ſaw any ſcruple or cauſe of ſtay, that I ſhould acquaint him, concluding with a *Quod dubites ne feceris*.

The third was, that I ſhould retrench all unneceſſary delays, that the ſubject might find that he did enjoy the ſame remedy againſt the fainting of the ſeal, and againſt the conſumption of the means and eſtate; which was ſpeedy juſtice. *Bis dat, qui cito dat.*

The

The fourth was, that juſtice might paſs with as eaſy charge as might be; and that thoſe ſame brambles, that grow about juſtice, of needleſs charge and expence, and all manner of exactions, might be rooted out ſo far as might be.

Theſe commandments, my lords, are righteous, and (as I may term them) ſacred; and therefore, to uſe a ſacred form, I pray God bleſs the King for his great care over the juſtice of the land, and give me, his poor ſervant, grace and power to obſerve his precepts.

Now for a beginning towards it, I have ſet down and applied particular orders to every one of theſe four general heads.

For the exceſs or tumour of this court of chancery, I ſhall divide it into five natures.

The firſt is, when the court doth embrace or retain cauſes, both in matter and circumſtance merely determinable and fit for the common law: for, my lords, the chancery is ordained to ſupply the law, and not to ſubvert the law. Now to deſcribe unto you, or delineate what thoſe cauſes are (and upon what differences) that are fit for the court, were too long a lecture. But I will tell you what remedy I have prepared. I will keep the keys of the court myſelf, and I will never refer any demurrer or plea (tending to diſcharge or diſmiſs the court of the cauſe) to any maſter of the chancery, but judge of it myſelf, or at leaſt the maſter of the rolls. Nay farther, I will appoint regularly, that on the Tueſday in every week (which is the day of orders) firſt to hear all motions of that nature before any other, that the ſubject may have his *vale* at firſt without further attending, and that the court do not keep and accumulate a miſcellany and confuſion of cauſes of all natures.

The ſecond point concerneth the time of the complaint, and the late comers into the chancery; which ſtay till a judgment be paſſed againſt them at the common law, and then complain: wherein your lordſhips may have heard a great rattle and a noiſe of a *praemunire*, and I cannot tell what. But that queſtion the King hath ſettled according to the ancient precedents in all times continued. And this I will ſay, that the opinion, not to relieve any caſe after judgment, would be a guilty opinion; guilty of the ruin, and naufrage, and periſhing of infinite ſubjects: and as the King found it well out, why ſhould a man fly into the chancery before he be hurt? The whole need not the phyſician, but the ſick. But, my lords, the power would be preſerved, but then the practice would be moderate. My rule ſhall be therefore, that in caſe of complaints after judgment (except the judgments be upon *nihil dicit*, which are but diſguiſes of judgment obtained in contempt of a preceding order of this court) yea, and after verdicts alſo, I will have the party complainant enter into good bond to prove his ſuggeſtion: ſo that if he will be relieved againſt a judgment at common law upon matter of equity, he ſhall do it *tanquam in vinculis*, at his peril.

The third point of exceſs may be the over-frequent and facile granting of injunctions for the ſtaying of the common laws, or the altering poſſeſſions; wherein theſe ſhall be my rules.

I will grant no injunction merely upon priority of ſuit; that is to ſay, becauſe this court was firſt poſſeſſed: a thing that was well reformed in the late lord chancellor's time, but uſed in chancellor Bromley's time; inſomuch, as I remember, that Mr. Dalton the counſellor at law, put a paſquil upon the court in nature of a bill; for ſeeing it was no more but, My lord, the bill came in on Monday, and the arreſt at common law was on Tueſday, I pray the injunction upon priority of ſuit: he cauſed his client that had a looſe debtor, to put a bill into the chancery before the bond due to him was forfeited, to deſire an order that he might have his money at the day, becauſe he would be ſure to be before the other. I do not mean to make it a matter of an horſe-race or poſting who ſhall be firſt in chancery, or in courts of law.

Neither will I grant an injunction upon matter contained in the bill only, be it never ſo ſmooth and ſpecious; but upon matter confeſſed in the defendant's anſwer, or matter pregnant in writing, or of record; or upon contempt of the defendant in not appearing, or not anſwering, or trifling with the court by inſufficient anſwering. For then it may be thought the defendant ſtands out

upon purpoſe to get the ſtart at the common law, and ſo take advantage of his own contempt; which may not be ſuffered.

As for injunctions for poſſeſſion, I ſhall maintain poſſeſſions as they were at the time of the bill exhibited; and for the ſpace of a year before, except the poſſeſſion were gotten by force or by any trick.

Neither will I alter poſſeſſion upon interlocutory orders, until a decree; except upon matter plainly confeſſed in the defendant's anſwer, joined with a plain diſability and inſolvency of the defendant's to anſwer the profits.

As for taking the poſſeſſion away in reſpect of contempts, I will have all the proceedings of the court ſpent firſt, and a ſequeſtration of the profits before I come to an injunction.

The fourth part of exceſs is concerning the communicating of the authority of the chancellor too far; and making, upon the matter, too many chancellors, by relying too much upon reports of the maſters of the chancery as concludent. I know, my lords, the maſters of the chancery are reverend men; and the great maſs of buſineſs of the court cannot be ſped without them; and it is a thing the chancellor may ſoon fall into for his own eaſe, to rely too much upon them. But the courſe that I will take generally ſhall be this; that I will make no binding order upon any report of the maſter's, without giving a ſeven night's day at the leaſt, to ſhew cauſe againſt the report (which nevertheleſs I will have done modeſtly, and with due reverence towards them:) and again, I muſt utterly diſcontinue the making of an hypothetical or conditional order; that if a maſter of the chancery do certify thus, that then it is ordered without farther motion; for that is a ſurprize, and gives no time for contradiction.

The laſt point of exceſs is, if a chancellor ſhall be ſo much of himſelf as he ſhould neglect aſſiſtance of reverend judges in caſes of difficulty (eſpecially if they touch upon law) or calling them, ſhall do it but *pro forma tantum*, and give no due reſpect to their opinions: wherein, my lords, preſerving the dignity and majeſty of the court (which I count rather increaſed than diminiſhed by grave and due aſſiſtance) I ſhall never be found ſo ſovereign or abundant in mine own ſenſe, but I ſhall both deſire and make true uſe of aſſiſtants. Nay, I aſſure your lordſhips, if I ſhould find any main diverſity of opinion of my aſſiſtants from mine own, though I know well the judicature wholly reſides in myſelf; yet I think I ſhould have recourſe to the oracle of the King's own judgment, before I ſhould pronounce. And ſo much for the temperate uſe of the authority of this court, wherein the health of the court doth much conſiſt, as that of the body conſiſts in temperance.

For the ſecond commandment of his Majeſty, touching ſtaying of grants at the great ſeal; there may be juſt cauſe of ſtay, either in the matter of the grant, or in the manner of paſſing the ſame. Out of both which I extract theſe ſix principal caſes which I will now make known: all which, nevertheleſs, I underſtand to be wholly ſubmitted to his Majeſty's will and pleaſure, after by me he ſhall have been informed: for if *iteratum mandatum* do come, obedience is better than ſacrifice.

The firſt caſe is, where any matter of revenue, or treaſure, or profit, paſſeth from his Majeſty; my firſt duty ſhall be to examine, whether the grant hath paſſed in the due and natural courſe by the great officers of the revenue (the lord treaſurer and chancellor of the exchequer) and with their privity; which if I find it not to be, I muſt preſume it to have paſſed in the dark, and by a kind of ſurreption; and will make ſtay of it till his Majeſty's pleaſure be farther known.

Secondly, if it be a grant that is not merely vulgar, and hath not of courſe paſſed at the ſignet by a *fac ſimile*, but needeth ſcience, my duty ſhall be to examine whether it hath paſſed by the learned counſel and had their dockets; which is that which his Majeſty reads, and that leads him. And if I find it otherwiſe (although the matter were not in itſelf inconvenient) yet I hold it juſt cauſe of ſtay (for precedent's ſake) to keep men in the right way.

Thirdly, if it be a grant which I conceive (out of my little knowledge) to be againſt the law; of which nature Theodoſius was wont to ſay, when he was preſſed, "I ſaid it, but I granted it not if it be unlawful:" I will call the learned

counſel

counſel to it (as well him that drew the book as the reſt) or ſome of them: and if we find cauſe, I will inform his Majeſty of our opinion, either by myſelf or ſome of them. For as for the judges, they are judges of grants paſt, but not of grants to come, except the King call them.

Fourthly, if the grants be againſt the King's book of bounty, I am expreſly commanded to ſtay them until the King either reviſe his book in general, or give direction in the particular.

Fifthly, if as a counſellor of eſtate, I do foreſee inconvenience to enſue by the grant in reaſon of eſtate, in reſpect of the King's honour, or diſcontent, or murmur of the people; I will not truſt mine own judgment, but I will either acquaint his Majeſty with it, or the council table, or ſome ſuch of my lords as I ſhall think fit.

Laſtly, for matter of pardons; if it be of treaſon, miſpriſion of treaſon, murder, either expreſſed or involute, by a *non-obſtante*; or of a piracy, or *præmunire*, or of fines, or exemplary puniſhment in ſtar-chamber, or of ſome other natures; I ſhall by the grace of God ſtay them until his Majeſty (who is the fountain of grace) may reſolve between God and him (underſtanding the caſe) how far grace ſhall abound, or ſuper-abound.

And if it be of perſons attainted and convicted of robbery, burglary, *etc.* then will I examine whether the pardons paſſed the hand of any juſtice of aſſize, or other commiſſioners, before whom the trial was made; and if not, I think it my duty alſo to ſtay them.

Thus your lordſhips ſee in this matter of the ſeal, agreeable to the commandment I have received, I mean to walk in the light; ſo that men may know where to find me: and this publiſhing thereof plainly, I hope, will ſave the King from a great deal of abuſe, and me from a great deal of envy; when men ſhall ſee that no particular turn or end leads me, but a general rule.

For the third general head of his Majeſty's precepts concerning ſpeedy juſtice, I am reſolved that my decree ſhall come ſpeedily (if not inſtantly) after the hearing, and my ſigned decree pronounced. For it hath been a manner much uſed of late in my lord's laſt time (of whom I learn much to imitate, and, with due reverence to his memory let me ſpeak it, much to avoid;) that upon the ſolemn and full hearing of a cauſe nothing is pronounced in court, but breviates are required to be made; which I do not diſlike in itſelf in cauſes perplexed. For I confeſs I have ſomewhat of the cunctative; and I am of opinion, that whoſoever is not wiſer upon advice than upon the ſudden, the ſame man is no wiſer at fifty years old than he was at thirty. And it was my father's ordinary word, "You "muſt give me time." But yet I find that when ſuch breviates were taken, the cauſe was ſometimes forgotten a term or two, and then ſet down for a new hearing, or a rehearing three or four terms after. Of which kind of intermiſſion I ſee no uſe, and therefore I will promiſe regularly to pronounce my decree within few days after my hearing; and to ſign my decree at leaſt in the vacation after the pronouncing. For freſh juſtice is the ſweeteſt. And beſides, juſtice ought not to be delayed; and it will alſo avoid all means-making or labouring; for there ought to be no labouring in cauſes, but the labouring of the counſel at the bar.

Again, becauſe juſtice is a ſacred thing, and the end for which I am called to this place, and therefore is my way to heaven (and if it be ſhorter, it is never a whit the worſe) I ſhall by the grace of God (as far as God will give me ſtrength) add the afternoon to the forenoon, and ſome fourth night of the vacation to the term, for the expediting and clearing of the cauſes of the court; only the depth of the three long vacations I would reſerve in ſome meaſure free for buſineſs of eſtate, and for ſtudies of arts and ſciences, to which in my nature I am moſt inclined.

There is another point of true expedition, which reſteth much in myſelf, and that is in the manner of giving orders. For I have ſeen an affectation of diſpatch turn utterly to delay and length: for the manner of it is to take the tale out of the counſellor at bar his mouth, and to give a curſory order, nothing tending or conducing to the end of the buſineſs. It makes me remember what I heard one ſay of a judge that ſat in the chancery; that he would make eighty orders in a morning out of the way, and it was out of the way indeed; for it was nothing to the end of the buſineſs: and this is that which makes ſixty, eighty, a

hundred

a hundred orders in a cauſe, to and fro, begetting one another; and like Penelope's web, doing and undoing. But I mean not to purchaſe the praiſe of expeditive in that kind; but as one that have a feeling of my duty, and of the caſe of others, my endeavour ſhall be to hear patiently, and to caſt my order into ſuch a mould as may ſooneſt bring the ſubject to the end of his journey.

As for ſuch delays as may concern others, the great abuſe is, that if the plaintiff have got an injunction to ſtay ſuits at common law, then he will ſpin on his cauſe at length. But by the grace of God, I will make injunctions an hard pillow to ſleep on; for if I find that he proſecutes not with effect, he may hap, when he is awake, find not only his injunction diſſolved, but his cauſe diſmiſſed.

There be other particular orders, I mean to take for *non* proſecution or faint proſecution, wherewith I will not trouble you now, becauſe *ſumma ſequar faſtigia rerum*. And ſo much for matter of expedition.

Now for the fourth and laſt point of the King's commandment; for the cutting off of unneceſſary charge of the ſubject, a great part of it is fulfilled in the precedent article, touching expedition; for it is the length of ſuits that doth multiply charge chiefly; but yet there are ſome other remedies that conduce thereunto.

Firſt, therefore I ſhall maintain ſtrictly, and with ſeverity, the former orders which I find made by my lord chancellor for the immoderate and needleſs prolixity, and length of bills, and anſwers, and ſo forth; as well in puniſhing the party, as fining the counſel, whoſe hand I ſhall find at ſuch bills, anſwers, *etc.*

Secondly, for all the examinations taken in the court, I do give charge unto the examiners (upon peril of their places) that they do not uſe idle repetitions, or needleſs circumſtances, in ſetting down the depoſitions taken by them; and I would I could help it likewiſe in commiſſions in the country, but that is almoſt impoſſible.

Thirdly, I ſhall take a diligent ſurvey of the copies in chancery, that they have their juſt number of lines, and without open and waſtful writing.

Fourthly, I ſhall be careful that there be no exaction of any new fees, but according as they have been heretofore ſet and tabled.

As for lawyers fees, I muſt leave to the conſcience and merit of the lawyer; and the eſtimation and gratitude of the client: but yet this I can do; I know there have uſed to attend this bar a number of lawyers that have not been heard, ſometimes, ſcarce once or twice in a term; and that makes the client ſeek to great counſel and favourites (as they call them, a term fitter for Kings than judges) and that for every order that a mean lawyer might diſpatch, and as well. Therefore to help the generality of lawyers, and therein to eaſe the client, I will conſtantly obſerve that every Tueſday, and other days of orders, after nine a clock ſtrucken, I will hear the bar until eleven, or half an hour after ten at the leaſt. And ſince we are upon the point whom I will hear, your lordſhips will give me leave to tell you a fancy. It falls out, that there be three of us the King's ſervants in great place, that are lawyers by deſcent, Mr. Attorney ſon of a judge, Mr. Solicitor likewiſe ſon of a judge, and myſelf a chancellor's ſon.

Now becauſe the law roots ſo well in my time, I will water it at the root thus far, as beſides theſe great ones, I will hear any judge's ſon before a ſergeant, and any ſergeant's ſon before a reader.

Laſtly, for the better eaſe of the ſubjects, and the bridling of contentious ſuits, I ſhall give better (that is greater) coſts where the ſuggeſtion are not proved, than hath been hitherto uſed.

There be divers other orders for the better reglement of this court; and for granting of writs, and for granting of benefices, and other things, which I ſhall ſet down in a table. But I will deal with no other to-day but ſuch as have a proper relation to his Majeſty's commandment; it being my comfort that I ſerve ſuch a maſter, that I ſhall need to be but a conduit for the conveying only of his goodneſs to his people. And it is true, that I do affect and aſpire to make good that ſaying, that *Optimus magiſtratus praeſtat optimae legi*; which is true in his Majeſty. But for myſelf, I doubt, I ſhall not attain it. But yet I have a domeſtical example to follow. My lords, I have no more to ſay, but now I will go on to the buſineſs of the court.

THE SPEECH

Which was uſed by the

Lord KEEPER of the GREAT SEAL,

In the Star-Chamber, before the Summer Circuits, the KING being then in Scotland, 1617.

THE King, by his perfect declaration publiſhed in this place concerning judges and juſtices, hath made the ſpeech of his chancellor, accuſtomed before the circuits, rather of ceremony than of uſe. For as in his book to his ſon he hath ſet forth a true character and platform of a King; ſo in this his ſpeech he hath done the like of a judge and juſtice: which ſheweth, that as his Majeſty is excellently able to govern in chief; ſo he is likewiſe well ſeen and ſkilful in the inferior offices and ſtages of juſtice and government; which is a thing very rare in Kings.

Yet nevertheleſs, ſomewhat muſt be ſaid to fulfil an old obſervance; but yet upon the King's grounds, and very briefly: for, as Solomon ſaith in another caſe, *In theſe things who is he that can come after the King?*

Firſt, You that are the judges of circuits are, as it were, the planets of the kingdom (I do you no diſhonour in giving you that name) and no doubt you have a great ſtroke in the frame of this government, as the other have in the great frame of the world. Do therefore as they do, move always, and be carried with the motion of your firſt mover, which is your Sovereign. A popular judge is a deformed thing: and *plaudite's* are fitter for players than for magiſtrates. Do good to the people, love them and give them juſtice; but let it be, as the Pſalm ſaith, *nihil inde expectantes*; looking for nothing, neither praiſe nor profit.

Yet my meaning is not, when I wiſh you to take heed of popularity, that you ſhould be imperious and ſtrange to the gentlemen of the country. You are above them in power, but your rank is not much unequal; and learn this, that power is ever of greateſt ſtrength, when it is civilly carried.

Secondly, You muſt remember, that beſides your ordinary adminiſtration of juſtice, you do carry the two glaſſes or mirrors of the ſtate; for it is your duty in theſe your viſitations, to repreſent to the people the graces and care of the King: and again, upon your return, to preſent to the King the diſtaſtes and griefs of the people.

Mark what the King ſays in his book: "Procure reverence to the King and "the law; inform my people truly of me (which, we know, is hard to do ac- "cording to the excellency of his merit; but yet endeavour it) how zealous I "am for religion; how I deſire law may be maintained and flouriſh; that every "court ſhould have its juriſdiction; that every ſubject ſhould ſubmit himſelf to "the law." And of this you have had of late no ſmall occaſion of notice and remembrance, by the great and ſtrait charge that the King hath given me as keeper of his ſeal, for the governing of the chancery without tumour or exceſs.

Again, *e re nata*, you at this preſent ought to make the people know and conſider the King's bleſſed care and providence in governing this realm in his abſence: ſo that ſitting at the helm of another kingdom, not without great affairs and buſineſs; yet he governs all things here by his letters and directions, as punctually and perfectly as if he were preſent.

I aſſure you, my lords of the council, and I do much admire the extenſion and latitude of his care in all things.

In the high commiſſion he did conceive a ſinew of government was a little ſhrunk; he recommended the care of it.

He hath called for the accounts of the laſt circuit from the judges to be tranſmitted unto him into Scotland.

Touching the infeſtation of pirates, he hath been careful, and is, and hath put things in a way.

All things that concern the reformation or the plantation of Ireland, he hath given in them punctual and reſolute directions. All this in abſence.

I give but a few inſtances of a publick nature; the ſecrets of council I may not enter into, though his diſpatches into France, Spain, and the Low-Countries, now in his abſence, are alſo notorious as to the outward ſending. So that I muſt conclude, that his Majeſty wants but more kingdoms, for I ſee he could ſuffice to all.

As for the other glaſs I told you of, of repreſenting to the King the griefs of his people, without doubt it is properly your part; for the King ought to be informed of any thing amiſs in the ſtate of his countries from the obſervations and relations of the judges (that indeed know the pulſe of the country) rather than from diſcourſe. But for this glaſs (thanks be to God) I do hear from you all, that there was never greater peace, obedience, and contentment in the country; though the beſt governments be always like the faireſt cryſtals, wherein every little icicle or grain is ſeen, which in a fouler ſtone is never perceived.

Now to ſome particulars, and not many: of all other things I muſt begin as the King begins; that is with the cauſe of religion, and eſpecially the hollow church-papiſt. St. Auguſtin hath a good compariſon of ſuch men, affirming, that they are like the roots of nettles, which themſelves ſting not, but yet they bear all the ſtinging leaves: let me know of ſuch roots, and I will root them out of the country.

Next, for the matter of religion; in the principal place I recommend both to you and to the juſtices, the countenancing of godly and zealous preachers. I mean not ſectaries or novelliſts, but thoſe which are ſound and conform, and yet pious and reverend: for there will be a perpetual defection, except you keep men in by preaching, as well as law doth by puniſhing; and commonly ſpiritual diſeaſes are not cured but by ſpiritual remedies.

Next, let me commend unto you the repreſſing (as much as may be) of faction in the countries, of which enſue infinite inconveniencies, and perturbations of all good order, and croſſing of all good ſervice in court or country, or whereſoever. Cicero, when he was conſul, had deviſed a fine remedy (a mild one, but an effectual and apt one) for he ſaith, *Eos, qui otium perturbant, reddam otioſos.* Thoſe that trouble others quiet, I will give them quiet; they ſhall have nothing to do, nor no authority ſhall be put into their hands. If I may know from you, of any who are in the country that are heads or hands of faction, or men of turbulent ſpirits; I ſhall give them *Cicero*'s reward, as much as in me is.

To conclude, ſtudy the King's book, and ſtudy yourſelves how you profit by it, and all ſhall be well. And you the juſtices of peace in particular, let me ſay this to you, never King of this realm did you ſo much honour as the King hath done you in his ſpeech, by being your immediate director, and by ſorting you and your ſervice with the ſervice of ambaſſadors, and of his neareſt attendance. Nay more, it ſeems his Majeſty is willing to do the ſtate of juſtice of peace honour actively alſo; by bringing in with time the like form of commiſſion into the government of Scotland, as that glorious King, Edward the third, did plant this commiſſion here in this kingdom. And therefore you are not fit to be copies, except you be fair written without blots or blurs, or any thing unworthy your authority: and ſo I will trouble you no longer for this time.

THE

THE SPEECH USED BY Sir FRANCIS BACON, Lord KEEPER of the GREAT SEAL of ENGLAND, TO Sir WILLIAM JONES,

Upon his calling to be

Lord CHIEF JUSTICE of IRELAND, 1617.

Sir WILLIAM JONES,

THE King's moſt excellent Majeſty, being duly informed of your ſufficiency every way, hath called you, by his writ now returned, to the ſtate and degree of a ſerjeant at law; but not to ſtay there, but, being ſo qualified, to ſerve him as his chief juſtice of his King's bench in his realm of Ireland. And therefore that which I ſhall ſay to you, muſt be applied not to your ſerjeant's place (which you take but in paſſage) but to that great place where you are to ſettle; and becauſe I will not ſpend time to the delay of the buſineſs of cauſes of the court, I will lead you the ſhort journey by examples, and not the long by precepts.

The place that you ſhall now ſerve in, hath been fortunate to be well ſerved in four ſucceſſions before you: do but take unto you the conſtancy and integrity of Sir Robert Gardiner; the gravity, temper, and direction of Sir James Lea; the quickneſs, induſtry, and diſpatch of Sir Humphry Winch; the care and affection to the commonwealth, and the prudent and politick adminiſtration of Sir John Denham, and you ſhall need no other leſſons. They were all Lincolns-Inn men as you are, you have known them as well in their beginnings, as in their advancement.

But becauſe you are to be there not only chief juſtice, but a counſellor of eſtate, I will put you in mind of the great work now in hand, that you may raiſe your thoughts according unto it. Ireland is the laſt *ex filiis Europae*, which hath been reclaimed from deſolation, and a deſart (in many parts) to population and plantation; and from ſavage and barbarous cuſtoms, to humanity and civility. This is the King's work in chief: it is his garland of heroical virtue and felicity, denied to his progenitors, and reſerved to his times. The work is not yet conducted to perfection, but is in fair advance: and this I will ſay confidently, that if God bleſs this kingdom with peace and juſtice, no uſurer is ſo ſure in ſeven years ſpace to double his principal with intereſt, and intereſt upon intereſt, as that kingdom is within the ſame time to double the ſtock both of wealth and people. So as that kingdom, which once within theſe twenty years, wiſe men were wont to doubt whether they ſhould wiſh it to be in a pool; is like now to become almoſt a garden, and younger ſiſter to Great Britain. And therefore you muſt ſet down with yourſelf to be not only a juſt governor, and a good chief juſtice (as if it were in England) but under the King and the deputy you are to be a maſter builder, and a maſter planter, and reducer of Ireland. To which end, I will trouble you at this time but with three directions.

The first is, that you have special care of the three plantations. That of the north, which is in part acted; that of Wexford, which is now in distribution; and that of Longford and Letrim, which is now in survey. And take this from me, that the bane of a plantation is, when the undertakers or planters make such haste to a little mechanical present profit, as disturbeth the whole frame and nobleness of the work for times to come. Therefore hold them to their covenants, and the strict ordinances of plantation.

The second is, that you be careful of the King's revenue, and by little and little constitute him a good demesne, if it may be, which hitherto is little or none. For the King's case is hard, when every man's land shall be improved in value with increase manifold, and the King shall be tied to his dry rent.

My last direction (though first in weight) is, that you do all good endeavours to proceed resolutely and constantly (and yet with due temperance and equality) in matters of religion; lest Ireland civil, become more dangerous to us than Ireland savage. So God give you comfort of your place.

After Sir William Jones's speech:

I had forgotten one thing, which was this. You may take exceeding great comfort, that you shall serve with such a deputy; one that (I think) is a man ordained of God to do great good to that kingdom. And this I think good to say to you, that the true temper of a chief justice towards a deputy is, neither servilely to second him, nor factiously to oppose him.

THE
Lord KEEPER's SPEECH,
In the EXCHEQUER,
TO
Sir JOHN DENHAM,
When he was called to be one of the Barons of the Exchequer.

Sir JOHN DENHAM,

THE King, of his grace and favour, hath made choice of you to be one of the barons of the exchequer, to ſucceed to one of the graveſt and moſt reverend judges of this kingdom; for ſo I hold Baron Altham was. The King takes you not upon credit, but proof, and great proof of your former ſervice: and that in both thoſe kinds wherein you are now to ſerve: for as you have ſhewed yourſelf a good judge between party and party, ſo you have ſhewed yourſelf a good adminiſter of the revenue, both when you were chief baron, and ſince as counſellor of eſtate there in Ireland, where the council, as you know, doth in great part manage and meſſuage the revenue.

And to both theſe parts I will apply ſome admonitions, but not vulgar or diſcurſive, but apt for the times, and in few words, for they are beſt remembered.

Firſt therefore, above all you ought to maintain the King's prerogative, and to ſet down with yourſelf, that the King's prerogative and the law are not two things; but the King's prerogative is law, and the principal part of the law, the firſt-born or *pars prima* of the law; and therefore in conſerving or maintaining that, you conſerve and maintain the law. There is not in the body of man one law of the head, and another of the body, but all is one entire law.

The next point that I would now adviſe you is, that you acquaint yourſelf diligently with the revenue; and alſo with the ancient records and precedents of this court. When the famous caſe of the copper-mines was argued in this court, and judged for the King, it was not upon the fine reaſons of wit; as that the King's prerogative drew to it the chief *in quaque ſpecie:* the lion is the chief of beaſts, the eagle the chief of birds, the whale the chief of fiſhes, and ſo copper the chief of minerals; for theſe are but dalliances of law and ornaments: but it was the grave records and precedents that grounded the judgment of that cauſe; and therefore I would have you both guide and arm yourſelf with them againſt theſe vapours and fumes of law, which are extracted out of mens inventions and conceits.

The third advice I will give you hath a large extent; it is, that you do your endeavour in your place ſo to manage the King's juſtice and revenue, as the King may have moſt profit, and the ſubject leaſt vexation: for when there is much vexation to the ſubject, and little benefit to the King, then the exchequer is ſick: and when there is much benefit to the King, with leſs trouble and vexation to the ſubject, then the exchequer is ſound. As for example; if there ſhall be much racking for the King's old debts; and the more freſh and late debts ſhall be either more negligently called upon, or over-eaſily diſcharged, or over indulgently ſtalled: or if the number of informations be many, and the King's part or fines for compoſitions a trifle; or if there be much ado to get the King new land upon concealments, and that which he hath already be not known and ſurveyed, nor the woods preſerved (I could put you many other caſes) this falls within that which I term the ſick eſtate of the exchequer: and this is that which makes every man ready with their undertakings and their projects to diſturb the ancient frame of the exchequer (than the which, I am perſuaded, there is not a better) this being the burden of the ſong: That much goeth out of the ſubject's purſe, and little cometh to the King's purſe. Therefore, give them not that advantage ſo to ſay. Sure I am, that beſides your own aſſociates, the barons, you ſerve with two ſuperior great officers, that have honourable and true ends, and deſire to ſerve the King and right the ſubject.

There reſteth, that I deliver you your patent.

His LORDSHIP's SPEECH

In the COMMON-PLEAS,

TO

JUSTICE HUTTON,

When he was called to be one of the Judges of the Common-Pleas.

Mr. Serjeant HUTTON,

THE King's moſt excellent Majeſty, being duly informed of your learning, integrity, diſcretion, experience, means, and reputation in your country, hath thought fit not to leave you theſe talents to be employed upon yourſelf only, but to call you to ſerve himſelf, and his people, in the place of one of his juſtices of the court of common-pleas.

This court where you are to ſerve, is the local center and heart of the laws of this realm: here the ſubject hath his aſſurance by fines and recoveries; here he hath his fixed and invariable remedies by *praecipe's* and writs of right; here juſtice opens not by a by-gate of privilege, but by the great gate of the King's original writs out of the chancery. Here iſſues proceſs of out-lawry; if men will not anſwer law in this center of law, they ſhall be caſt out. And therefore it is proper for you, by all means, with your wiſdom and fortitude, to maintain the laws of the realm: wherein, nevertheleſs, I would not have you head-ſtrong, but heart-ſtrong; and to weigh and remember with yourſelf, that the twelve judges of the realm are as the twelve lions under Solomon's throne: they muſt ſhew their ſtoutneſs in elevating and bearing up the throne. To repreſent unto you the lines and portraitures of a good judge:

The firſt is, That you ſhould draw your learning out of your books, not out of your brain.

2. That you ſhould mix well the freedom of your own opinion with the reverence of the opinion of your fellows.

3. That you ſhould continue the ſtudying of your books, and not to ſpend on upon the old ſtock.

4. That you ſhould fear no man's face, and yet not turn ſtoutneſs into bravery.

5. That you ſhould be truly impartial, and not ſo as men may ſee affection through fine carriage.

6. That you ſhould be a light to jurors to open their eyes, but not a guide to lead them by the noſes.

7. That you affect not the opinion of pregnancy and expedition by an impatient and catching hearing of the counſellors at the bar.

8. That your ſpeech be with gravity, as one of the ſages of the law; and not talkative, nor with impertinent flying out to ſhew learning.

9. That your hands, and the hands of your hands (I mean thoſe about you) be clean, and uncorrupt from gifts, from meddling in titles, and from ſerving of turns, be they of great ones or ſmall ones.

10. That you contain the juriſdiction of the court within the ancient mere-ſtones, without removing the mark.

11. Laſtly, That you carry ſuch a hand over your miniſters and clerks, as that they may rather be in awe of you, than preſume upon you.

Theſe and the like points of the duty of a judge, I forbear to enlarge; for the longer I have lived with you, the ſhorter ſhall my ſpeech be to you; knowing that you come ſo furniſhed and prepared with theſe good virtues, as whatſoever I ſhall ſay cannot be new unto you; and therefore I will ſay no more unto you at this time, but deliver you your patent.

ORDI-

ORDINANCES

MADE BY THE

LORD CHANCELLOR BACON,

For the better and more regular

Adminiſtration of Juſtice in the CHANCERY,

To be daily obſerved, ſaving the prerogative of the Court.

NO decree ſhall be reverſed, altered, or explained, being once under the great ſeal, but upon bill of review; and no bill of review ſhall be admitted, except it contain either error in law, appearing in the body of the decree, without farther examination of matters in fact, or ſome new matter which hath riſen in time after the decree, and not any new proof which might have been uſed when the decree was made: nevertheleſs upon new proof, that is come to light after the decree made, and could not poſſibly have been uſed at the time when the decree paſſed, a bill of review may be grounded by the ſpecial licenſe of the court, and not otherwiſe. Decrees.

2. In caſe of miſcaſting (being a matter demonſtrative) a decree may be explained, and reconciled by an order without a bill of review; not underſtanding, by miſcaſting, any pretended miſrating or miſvaluing, but only error in the auditing or numbering.

3. No bill of review ſhall be admitted, or any other new bill, to change matter decreed, except the decree be firſt obeyed and performed: as, if it be for land, that the poſſeſſion be yielded; if it be for money, that the money be paid; if it be for evidences, that the evidences be brought in; and ſo in other caſes which ſtand upon the ſtrength of the decree alone.

4. But if any act be decreed to be done which extinguiſheth the parties right at the common law, as making of aſſurance or releaſe, acknowledging ſatisfaction, cancelling of bonds, or evidences, and the like; thoſe parts of the decree are to be ſpared until the bill of review be determined; but ſuch ſparing is to be warranted by publick order made in court.

5. No bill of review ſhall be put in, except the party that prefers it enter into recognizance with ſureties for ſatisfying of coſts and damages for the delay, if it be found againſt him.

6. No decrees ſhall be made, upon pretence of equity, againſt the expreſs proviſion of an act of parliament: nevertheleſs if the conſtruction of ſuch act of parliament hath for a time gone one way in general opinion and reputation, and after by a later judgment hath been controlled, then relief may be given upon matter of equity, for caſes ariſing before the ſaid judgment, becauſe the ſubject was in no default.

7. Impriſonment for breach of a decree is in nature of an execution, and therefore the cuſtody ought to be ſtrait, and the party not to have any liberty to go abroad, but by ſpecial licenſe of the lord Chancellor; but no cloſe impriſonment is to be, but by expreſs order for wilful and extraordinary contempts and diſobedience, as hath been uſed.

8. In caſe of enormous and obſtinate diſobedience in breach of a decree, an injunction is to be granted *ſub poena* of a ſum; and upon affidavit, or other ſufficient proof, of perſiſting in contempt, fines are to be pronounced by the

lord Chancellor in open court, and the ſame to be eſtreated down into the hanaper, if cauſe be, by a ſpecial order.

9. In caſe of a decree made for the poſſeſſion of land, a writ of execution goes forth; and if that be diſobeyed, then proceſs of contempt according to the courſe of the court againſt the perſon, unto a commiſſion of rebellion; and then a ſerjeant at arms by ſpecial warrant: and in caſe the ſerjeant at arms cannot find him, or be reſiſted; or upon the coming in of the party, and his commitment, if he perſiſt in diſobedience, an injunction is to be granted for the poſſeſſion; and in caſe alſo that be diſobeyed, then a commiſſion to the ſheriff to put him into poſſeſſion.

10. Where the party is committed for the breach of a decree, he is not to be enlarged until the decree be fully performed in all things, which are to be done preſently. But if there be other parts of the decree to be performed at days, or times to come, then he may be enlarged by order of the court upon recognizance, with ſureties to be put in for the performance thereof *de futuro*, otherwiſe not.

11. Where cauſes come to a hearing in court, no decree bindeth any perſon who was not ſerved with proceſs *ad audiendum judicium*, according to the courſe of the court, or did appear *gratis* in perſon in court.

12. No decree bindeth any that cometh in *bona fide*, by conveyance from the defendant before the bill exhibited, and is made no party, neither by bill nor the order: but where he comes in *pendente lite*, and while the ſuit is in full proſecution, and without any colour of allowance or privity of the court, there regularly the decree bindeth; but if there were any intermiſſion of ſuit, or the court made acquainted with the conveyance, the court is to give order upon the ſpecial matter according to juſtice.

Diſmiſſions.

13. WHERE cauſes are diſmiſſed upon full hearing, and the diſmiſſion ſigned by the lord Chancellor, ſuch cauſes ſhall not be retained again, nor new bill exhibited, except it be upon new matter, like to the caſe of the bill of review.

14. In caſe of all other diſmiſſions, which are not upon hearing of the cauſe, if any new bill be brought, the diſmiſſion is to be pleaded; and after reference and report of the contents of both ſuits, and conſideration taken of the former orders and diſmiſſion, the court ſhall rule the retaining or diſmiſſing of the new bill, according to juſtice and the nature of the caſe.

15. All ſuits grounded upon wills nuncupative, leaſes parol, or upon long leaſes that tend to the defeating of the King's tenures, or for the eſtabliſhing of perpetuities, or grounded upon remainders put into the crown, to defeat purchaſers; or for brokage or rewards to make marriages; or for bargains at play and wagers; or for bargains for offices contrary to the ſtatute of 5 and 6 Edw. VI. or for contracts upon uſury or ſimony, are regularly to be diſmiſſed upon motion, if they be the ſole effect of the bill; and if there be no ſpecial circumſtances to move the court to allow their proceedings, and all ſuits under the value of ten pounds, are regularly to be diſmiſſed. *V. poſtea* § 58, 60.

16. Diſmiſſions are properly to be prayed, and had, either upon hearing, or upon plea unto the bill, when the cauſe comes firſt into the court; but diſmiſſions are not to be prayed after the parties have been at charge of examination, except it be upon ſpecial cauſe.

17. If the plaintiff diſcontinue the proſecution, after all the defendants have anſwered, above the ſpace of one whole term, the cauſe is to be diſmiſſed of courſe without any motion; but after replication put in, no cauſe is to be diſmiſſed without motion and order of the court.

Election of ſuits.

18. DOUBLE vexation is not to be admitted; but if the party ſue for the ſame cauſe at the common law, and in chancery, he is to have a day given to make his election where he will proceed, and in default of making ſuch election to be diſmiſſed.

19. WHERE

19. Where causes are removed by special *certiorari* upon a bill, containing matter of equity, the plaintiff is, upon receipt of his writ, to put in bond to prove his suggestions within fourteen days after the receipt; which if he do not prove, then upon certificate from either of the examiners, presented to the lord Chancellor, the cause shall be dismissed with costs, and a *procedendo* to be granted. *Certiorari.*

20. No injunction of any nature shall be granted, revived, dissolved, or stayed upon any private petition. Injunction.

21. No injunction to stay suits at the common law shall be granted upon priority of suit only, or upon surmise of the plaintiff's bill only; but upon matter confessed in the defendant's answer, or matter of record, or writing plainly appearing, or when the defendant is in contempt for not answering, or that the debt desired to be stayed appeareth to be old, and hath slept long, or the creditor or the debtor hath been dead some good time before the suit brought.

22. Where the defendant appears not, but sits an attachment; or when he doth appear, and departs without answer, and is under attachment for not answering; or when he takes oath he cannot answer without sight of evidences in the country; or where after answer he sues at common law by attorney, and absents himself beyond sea; in these cases an injunction is to be granted for the stay of all suits at the common law, until the party answer or appear in person in court, and the court give farther order: but nevertheless upon answer put in, if there be no motion made the same term, or the next general seal after the term, to continue the injunction in regard of the insufficiency of the answer put in, or in regard of matter confessed in the answer, then the injunction to die and dissolve without any special order.

23. In the case aforesaid, where an injunction is to be awarded for stay of suits at the common law, if the like suit be in the chancery, either by *scire facias*, or privilege, or English bill, then the suit is to be stayed by order of the court, as it is in other courts by injunction, for that the court cannot enjoin itself.

24. Where an injunction hath been obtained for staying of suits, and no prosecution is had for the space of three terms, the injunction is to fall of itself without farther motion.

25. Where a bill comes in after an arrest at the common law for debt, no injunction shall be granted without bringing the principal money into court, except there appear in the defendant's answer, or by sight of writings, plain matter tending to discharge the debt in equity: but if an injunction be awarded and disobeyed, in that case no money shall be brought in, or deposited, in regard of the contempt.

26. Injunctions for possession are not to be granted before a decree, but where the possession hath continued by the space of three years, before the bill exhibited, and upon the same title; and not upon any title by lease, or otherwise determined.

27. In case where the defendant sits all the process of contempt, and cannot be found by the serjeant at arms, or resists the serjeant, or makes rescue, a sequestration shall be granted of the land in question; and if the defendant render not himself within the year, then an injunction for the possession.

28. Injunctions against felling of timber, ploughing up of ancient pastures, or for the maintaining of inclosures, or the like, shall be granted according to the circumstances of the case; but not in case where the defendant upon his answer claimeth an estate of inheritance, except it be where he claimeth the land in trust, or upon some other special ground.

29. No sequestration shall be granted but of lands, leases, or goods in question, and not of any other lands or goods, not contained in the suits. Sequestrations.

30. Where a decree is made for rent to be paid out of land, or a sum of money to be levied out of the profits of land, there a sequestration of the same lands, being in the defendant's hands, may be granted.

31. Where the decrees of the provincial council, or of the court of requeſts, or the Queen's court, are by contumacy or other means interrupted; there the court of chancery, upon a bill preferred for corroborations of the ſame juriſdictions, decrees, and ſentences, ſhall give remedy.

32. Where any cauſe comes to a hearing, that hath been formerly decreed in any other of the King's courts at Weſtminſter, ſuch decree ſhall be firſt read, and then to proceed to the reſt of the evidence on both ſides.

Suits after judgment.

33. SUITS after judgment may be admitted according to the ancient cuſtom of the chancery, and the late royal deciſion of his Majeſty, of record, after ſolemn and great deliberation: but in ſuch ſuits it is ordered, that bond be put in with good ſureties to prove the ſuggeſtions of the bill.

34. Decrees upon ſuits brought after judgment ſhall contain no words to make void or weaken the judgment, but ſhall only correct the corrupt conſcience of the party, and rule him to make reſtitution, or perform other acts, according to the equity of the cauſe.

Orders, and the office of the Regiſters.

35. THE regiſters are to be ſworn, as hath been lately ordered.

36. If any order ſhall be made, and the court not informed of the laſt material order formerly made, no benefit ſhall be taken by ſuch order, as granted by abuſe and ſurreption; and to that end the regiſters ought duly to mention the former order in the later.

37. No order ſhall be explained upon any private petition but in court as they are made, and the regiſter is to ſet down the orders as they were pronounced by the court, truly, at his peril, without troubling the lord Chancellor, by any private attending of him, to explain his meaning; and if any explanation be deſired, it is to be done by publick motion, where the other party may be heard.

38. No draught of any order ſhall be delivered by the regiſter to either party, without keeping a copy by him, to the end that if the order be not entered, nevertheleſs the court may be informed what was formerly done, and not put to new trouble and hearing; and to the end alſo that knowledge of orders be not kept back too long from either party, but may preſently appear at the office.

39. Where a cauſe hath been debated upon hearing of both parties, and opinion hath been delivered by the court, and nevertheleſs the cauſe referred to treaty, the regiſters are not to omit the opinion of the court, in drawing of the order of reference, except the court doth ſpecially declare that it be entered without any opinion either way; in which caſe nevertheleſs the regiſters are out of their ſhort note to draw up ſome more full remembrance of that that paſſed in court, to inform the court if the cauſe come back and cannot be agreed.

40. The regiſters, upon ſending of their draught unto the counſel of the parties, are not to reſpect the interlineations, or alterations of the ſaid counſel (be the ſaid counſel never ſo great) farther, than to put them in remembrance of that which was truly delivered in court, and ſo to conceive the order, upon their oath and duty, without any farther reſpect.

41. The regiſters are to be careful in the penning and drawing up of decrees, and ſpecial matters of difficulty and weight; and therefore when they preſent the ſame to the lord Chancellor, they ought to give him underſtanding which are ſuch decrees of weight, that they may be read and reviewed before his lordſhip ſign them.

42. The decrees granted at the rolls are to be preſented to his lordſhip, with the orders whereupon they are drawn, within two or three days after every term.

43. Injunctions for poſſeſſion, or for ſtay of ſuits after verdict, are to be preſented to his lordſhip, together with the orders whereupon they go forth, that his lordſhip may take conſideration of the order before he ſign them.

44. Where any order upon the ſpecial nature of the caſe ſhall be made againſt any of theſe general rules, there the regiſter ſhall plainly and expreſly

ſet

ſet down the particulars, reaſons and grounds, moving the court to vary from the general rule.

References.

45. No reference upon a demurrer, or queſtion touching the juriſdiction of the court, ſhall be made to the maſters of the chancery; but ſuch demurrers ſhall be heard and ruled in court, or by the lord Chancellor himſelf.

46. No order ſhall be made for the confirming or ratifying of any report without day firſt given, by the ſpace of a ſevennight at the leaſt, to ſpeak to it in court.

47. No reference ſhall be made to any maſters of the court, or any other commiſſioners to hear and determine, where the cauſe is gone ſo far as to examination of witneſſes, except it be in ſpecial cauſes of parties near in blood, or of extreme poverty, or by conſent and general reference of the eſtate of the cauſe, except it be by conſent of the parties to be ſparingly granted.

48. No report ſhall be reſpected in court, which exceedeth the warrant of the order of reference.

49. The maſters of the court are required not to certify the ſtate of any cauſe, as if they would make breviate of the evidence on both ſides, which doth little eaſe the court, but with ſome opinion; or otherwiſe, in caſe they think it too doubtful to give opinion, and therefore make ſuch ſpecial certificate, the cauſe is to go on to a judicial hearing, without reſpect had to the ſame.

50. Matters of account, unleſs it be in very weighty cauſes, are not fit for the court, but to be prepared by reference, with this difference nevertheleſs, that the cauſe comes firſt to a hearing; and upon the entrance into a hearing, they may receive ſome direction, and be turned over to have the accounts conſidered, except both parties, before a hearing, do conſent to a reference of the examination of the accounts, to make it more ready for a hearing.

51. The like courſe to be taken for the examination of court rolls, upon cuſtoms and copies, which ſhall not be referred to any one maſter, but to two maſters at the leaſt.

52. No reference to be made of the inſufficiency of an anſwer, without ſhewing of ſome particular point of the defect, and not upon ſurmiſe of the inſufficiency in general.

53. Where a truſt is confeſſed by the defendant's anſwer, there needeth no farther hearing of the cauſe, but a reference preſently to be made upon the account, and ſo to go on to a hearing of the accounts.

Suits in court.

54. In all ſuits where it ſhall appear, upon the hearing of the cauſe, that the plaintiff had not *probabilem cauſam litigandi*, he ſhall pay unto the defendant his utmoſt coſts, to be aſſeſſed by the court.

Bills, demurrers, anſwers, pleadings, and copies.

55. If any bill, anſwers, replication, or rejoinder, ſhall be found of an immoderate length, both the party and the counſel under whoſe hand it paſſeth ſhall be fined.

56. If there be contained in any bill, anſwer, or other pleadings, or any interrogatory, any matter libellous or ſlanderous againſt any that is not party to the ſuit, or againſt ſuch as are parties to the ſuit, upon matters impertinent, or in derogation of the ſettled authorities of any of his Majeſty's courts; ſuch bills, anſwers, pleadings, or interrogatories ſhall be taken off the file and ſuppreſſed, and the parties ſeverally puniſhed by commitment or ignominy, as ſhall be thought fit, for the abuſe of the court; and the counſellors at law, who have ſet their hands, ſhall likewiſe receive reproof or puniſhment, if cauſe be.

57. Demurrers and pleas which tend to diſcharge the ſuit ſhall be heard firſt upon every day of orders, that the ſubject may know whether he ſhall need farther attendance or no.

58. A demurrer is properly upon matter defective, contained in the bill itſelf, and no foreign matter; but a plea is of foreign matter to diſcharge or ſtay the ſuit, as that the cauſe hath been formerly diſmiſſed, or that the plaintiff is outlawed, or excommunicated; or there is another bill depending for the ſame

cauſe,

cauſe, or the like: and ſuch plea may be put in without oath, in caſe where the matter of the plea appear upon record; but if it be any thing that doth not appear upon record, the plea muſt be upon oath.

59. No plea of outlawry ſhall be allowed without pleading the record *ſub pede ſigilli*; nor plea of excommunication, without the ſeal of the ordinary.

60. Where any ſuit appeareth upon the bill to be of the natures which are regularly to be diſmiſſed according to the fifteenth ordinance, ſuch matter is to be ſet forth by way of demurrer.

61. Where an anſwer ſhall be certified inſufficient, the defendant is to pay coſts; and if a ſecond anſwer be returned inſufficient, in the points before certified inſufficient, then double coſts, and upon the third treble coſts, and upon the fourth quadruple coſts, and then to be committed alſo until he hath made a perfect anſwer, and to be examined upon interrogatories touching the points defective in his anſwer; but if any anſwer be certified ſufficient, the plaintiff is to pay coſts.

62. No inſufficient anſwer can be taken hold of after replication put in, becauſe it is admitted ſufficient by the replication.

63. An anſwer to a matter charged as the defendant's own fact muſt be direct, without ſaying it is to his remembrance, or as he believeth, if it be laid down within ſeven years before; and if the defendant deny the fact, he muſt traverſe it directly, and not by way of negative pregnant; as if a fact be laid to be done with divers circumſtances, the defendant may not traverſe it literally as it is laid in the bill, but muſt traverſe the point of ſubſtance; ſo if he be charged with the receipt of one hundred pounds, he muſt traverſe that he hath not received a hundred pounds, or any part thereof; and if he have received part, he muſt ſet forth what part.

64. If a hearing be prayed upon bill and anſwer, the anſwer muſt be admitted to be true in all points, and a decree ought not to be made, but upon hearing the anſwer read in court.

65. Where no counſel appears for the defendant at the hearing, and the proceſs appears to have been ſerved, the anſwer of ſuch defendant is to be read in court.

66. No new matter is to be contained in any replication, except it be to avoid matter ſet forth in the defendant's anſwer.

67. All copies in chancery ſhall contain fifteen lines in every ſheet thereof, written orderly and unwaſtfully, unto which ſhall be ſubſcribed the name of the principal clerk of the office where it is written, or his deputy, for whom he will anſwer, for which only ſubſcription no fee at all ſhall be taken.

Commiſſions, examinations, and depoſitions.

68. All commiſſions for examination of witneſſes ſhall be *ſuper interr. incluſis* only, and no return of depoſitions into the court ſhall be received, but ſuch only as ſhall be either compriſed in one roll, ſubſcribed with the name of the commiſſioners, or elſe in divers rolls, whereof each one ſhall be ſo ſubſcribed.

69. If both parties join in commiſſion, and upon warning given the defendant bring his commiſſioners, but produceth no witneſſes, nor miniſtereth interrogatories, but after ſeek a new commiſſion, the ſame ſhall not be granted: but nevertheleſs upon ſome extraordinary excuſe of the defendant's default, he may have liberty granted by ſpecial order to examine his witneſſes in court upon the former interrogatories, giving the plaintiff or his attorney notice, that he may examine alſo if he will.

70. The defendant is not to be examined upon interrogatories, except it be in very ſpecial caſes, by expreſs order of the court, to ſift out ſome fraud or practice pregnantly appearing to the court, or otherwiſe upon offer of the plaintiff to be concluded by the anſwer of the defendant without any liberty to diſprove ſuch anſwer, or to impeach him after of perjury.

71. Decrees in other courts may be read upon hearing without the warrant of any ſpecial order: but no depoſitions taken in any other court are to be read but by ſpecial order; and regularly the court granteth no order for reading

of depoſitions, except it be between the ſame parties, and upon the ſame title and cauſe of ſuit.

72. No examination is to be had of the credit of any witneſs but by ſpecial order, which is ſparingly to be granted.

73. Witneſſes ſhall not be examined *in perpetuam rei memoriam*, except it be upon the ground of a bill firſt put in, and anſwer thereunto made, and the defendant or his attorney made acquainted with the names of the witneſſes that the plaintiff would have examined, and ſo publication to be of ſuch witneſſes; with this reſtraint nevertheleſs, that no benefit ſhall be taken of the depoſitions of ſuch witneſſes, in caſe they may be brought *viva voce* upon the trial, but only to be uſed in caſe of death before the trial, or age, or impotency, or abſence out of the realm at the trial.

74. No witneſſes ſhall be examined after publication, except it be by conſent, or by ſpecial order, *ad informandam conſcientiam judicis*, and then to be brought cloſe ſealed up to the court to peruſe or publiſh, as the court ſhall think good. *Ad informandam conſcientiam judicis.*

75. No affidavit ſhall be taken or admitted by any maſter of the chancery, tending to the proof or diſproof of the title, or matter in queſtion, or touching the merits of the cauſe; neither ſhall any ſuch matter be colourably inſerted in any affidavit for ſerving of proceſs. Affidavits.

76. No affidavit ſhall be taken againſt affidavit, as far as the maſters of the chancery can have knowledge; and if any ſuch be taken, the latter affidavit ſhall not be uſed nor read in court.

77. In caſe of contempts grounded upon force or ill words, upon ſerving of proceſs, or upon words of ſcandal of the court, proved by affidavit, the party is forthwith to ſtand committed; but for other contempts againſt the orders or decrees of the court an attachment goes forth, firſt, upon affidavit made, and then the party is to be examined upon interrogatories, and his examination referred; and if upon his examination he confeſs matter of contempt, he is to be committed; if not, the adverſe party may examine witneſſes to prove the contempt: and therefore if the contempt appear, the party is to be committed; but if not, or if the party that purſues the contempt do fail in putting in interrogatories or other proſecution, or fail in the proof of the contempt, then the party charged with the contempt is to be diſcharged, with good coſts.

78. They that are in contempt, ſpecially ſo far as proclamation of rebellion, are not to be heard, neither in that ſuit, nor any other, except the court of ſpecial grace ſuſpend the contempt.

79. Impriſonment upon contempt for matters paſt, may be diſcharged of grace, after ſufficient puniſhment, or otherwiſe diſpenſed with: but if the impriſonment be for not performance of any order of the court in force, they ought not to be diſcharged except they firſt obey, but the contempt may be ſuſpended for a time.

80. Injunctions, ſequeſtrations, diſmiſſions, retainers upon diſmiſſions, or final orders, are not to be granted upon petitions. Petitions.

81. No former order made in court is to be altered, croſſed, or explained upon any petition; but ſuch orders may be ſtayed upon petition for a ſmall ſtay, until the matter may be moved in court.

82. No commiſſion for examination of witneſſes ſhall be diſcharged; nor no examinations or depoſitions ſhall be ſuppreſſed upon petition, except it be upon point of courſe of the court firſt referred to the clerks, and certificate thereupon.

83. No demurrer ſhall be over-ruled upon petition.

84. No *ſcire facias* ſhall be awarded upon recognizances not enrolled, nor upon recognizances enrolled, unleſs it be upon examination of the record with the writ; nor no recognizance ſhall be enrolled after the year, except it be upon ſpecial order from the lord Chancellor.

85. No writ of *ne exeat regnum*, prohibition, conſultation, ſtatute of Northampton, *certiorari* ſpecial, or *procedendo* ſpecial, or *certiorari* or *procedendo* general, more than once in the ſame cauſe; *habeas corpus*, or *corpus cum cauſa*, *vi laica removend'*, or reſtitution thereupon, *de coronatore et viridario eligendo*, in caſe of a moving *de homine repleg. aſſiz.* or ſpecial patent, *de ballivo amovend'*, *certiorari ſuper praeſentationibus fact. coram commiſſariis ſewar'*, or *ad quod dampnum*, ſhall paſs without warrant under the lord Chancellor's hand, and ſigned by him, ſave ſuch writs *ad quod dampnum*, as ſhall be ſigned by maſter attorney.

86. Writs of privilege are to be reduced to a better rule, both for the number of perſons that ſhall be privileged, and for the caſe of the privilege: and as for the number, it ſhall be ſet down by ſchedule: for the caſe, it is to be underſtood, that beſides perſons privileged as attendants upon the court, ſuitors and witneſſes are only to have privilege, *eundo*, *redeundo*, *et morand.*, for their neceſſary attendance, and not otherwiſe; and that ſuch writ of privilege diſchargeth only an arreſt upon the firſt proceſs, but yet, where at ſuch times of neceſſary attendance the party is taken in execution, it is a contempt to the court, and accordingly to be puniſhed.

87. No *ſupplicavit* for the good behaviour ſhall be granted, but upon articles grounded upon the oath of two at the leaſt, or certificate of any one juſtice of aſſize, or two juſtices of the peace, with affidavit that it is their hands, or by order of the ſtar-chamber, or chancery, or other of the King's courts.

88. No recognizance of the good behaviour, or the peace, taken in the country, and certified into the petty-bag, ſhall be filed in the year without warrant from the lord Chancellor.

89. Writs of *ne exeat regnum* are properly to be granted according to the ſuggeſtion of the writ, in reſpect of attempts prejudicial to the King and ſtate, in which caſe the lord Chancellor will grant them upon prayer of any the principal ſecretaries without cauſe ſhewing, or upon ſuch information as his lordſhip ſhall think of weight: but otherwiſe alſo they may be granted, according to the practice of long time uſed, in caſe of interlopers in trade, great bankrupts, in whoſe eſtate many ſubjects are intereſted, or other caſes that concern multitudes of the King's ſubjects, alſo in caſe of duels, and divers others.

90. All writs, certificates, and whatſoever other proceſs *ret. coram Rege in Canc.* ſhall be brought into the chapel of the rolls, within convenient time after the return thereof, and ſhall be there filed upon their proper files and bundles as they ought to be; except the depoſitions of witneſſes, which may remain with any of the ſix clerks by the ſpace of one year next after the cauſe ſhall be determined by decree, or otherwiſe be diſmiſſed.

91. All injunctions ſhall be enrolled, or the tranſcript filed, to the end that if occaſion be, the court may take order to award writs of *ſcire facias* thereupon, as in ancient time hath been uſed.

92. All days given by the court to ſheriffs to return their writs, or bring in their priſoners upon writs of privilege, or otherwiſe between party and party, ſhall be filed, either in the regiſter's office, or in the petty-bag reſpectively; and all recognizances taken to the King's uſe, or unto the court, ſhall be duly enrolled in convenient time, with the clerks of the enrollment, and calendars made of them, and the calendars every Michaelmas term to be preſented to the lord Chancellor.

93. In caſe of ſuits upon the commiſſions for charitable uſes, to avoid charge, there ſhall need no bill, but only exceptions to the decree, and anſwer forthwith to be made thereunto; and thereupon, and upon ſight of the inquiſition, and the decree brought unto the lord Chancellor by the clerk of the petty-bag, his lordſhip, upon peruſal thereof, will give order under his hand for an abſolute decree to be drawn up.

94. Upon ſuit for the commiſſion of ſewers, the names of thoſe that are deſired to be commiſſioners are to be preſented to the lord Chancellor in writing; then his lordſhip will ſend the names of ſome privy counſellor, lieutenant

of the ſhire, or juſtices of aſſize, being reſident in the parts for which the commiſſion is prayed, to conſider of them, that they be not put in for private reſpects; and upon the return of ſuch opinion, his lordſhip will give farther order for the commiſſion to paſs.

95. No new commiſſion of ſewers ſhall be granted while the firſt is in force, except it be upon diſcovery of abuſe or fault in the firſt commiſſioners, or otherwiſe upon ſome great or weighty ground.

96. No commiſſion of bankrupt ſhall be granted, but upon petition firſt exhibited to the lord Chancellor, together with names preſented, of which his lordſhip will take conſideration, and always mingle ſome learned in the law with the reſt; yet ſo as care be taken that the ſame parties be not too often uſed in commiſſions; and likewiſe care is to be taken that bond with good ſurety be entered into, in 2001. at leaſt, to prove him a bankrupt.

97. No commiſſion of delegates in any cauſe of weight ſhall be awarded, but upon petition preferred to the lord Chancellor, who will name the commiſſioners himſelf, to the end they may be perſons of convenient quality, having regard to the weight of the cauſe, and the dignity of the court from whence the appeal is.

98. Any man ſhall be admitted to defend *in forma pauperis* upon oath, but for plaintiffs they are ordinarily to be referred to the court of requeſts, or to the provincial councils, if the caſe ariſe in thoſe juriſdictions, or to ſome gentlemen in the country, except it be in ſome ſpecial caſes of commiſeration, or potency of the adverſe party.

99. Licences to collect for loſſes by fire or water are not to be granted, but upon good certificate; and not for decays of ſuretyſhip or debt, or any other caſualties whatſoever; and they are rarely to be renewed; and they are to be directed ever unto the county where the loſs did ariſe, if it were by fire, and the counties that abut upon it, as the caſe ſhall require; and if it were by ſea, then unto the county where the port is, from whence the ſhip went, and to ſome ſea-counties adjoining.

100. No exemplification ſhall be made of letters patent *(inter alia)* with omiſſion of the general words; nor of records made void, or cancelled; nor of the decrees of this court not enrolled; nor of depoſitions by parcel and fractions, omitting the reſidue of the depoſitions in court, to which the hand of the examiner is not ſubſcribed; nor of records of the court not being inrolled or filed; nor of records of any other court, before the ſame be duly certified to this court, and orderly filed here; nor of any records upon the ſight and examination of any copy in paper, but upon ſight and examination of the original.

101. And becauſe time and experience may diſcover ſome of theſe rules to be inconvenient, and ſome other to be fit to be added; therefore his lordſhip intendeth in any ſuch caſe from time to time to publiſh any ſuch revocations or additions.

THE

THE PASSAGES in PARLIAMENT AGAINST FRANCIS, Viſcount St. Alban, Lord Chancellor of England.

Anno Dom. 1620, and 1621.

On monday, the nineteenth day of March 1620, in the afternoon, the commons had a conference with the lords; which conference was reported the next day by the lord treaſurer, [who] delivered the deſire of the commons to inform their lordſhips of the great abuſes of the courts of juſtice: the information whereof was divided into theſe three parts.

Firſt, The perſons accuſed.

Secondly, Of the matters objected againſt them.

Thirdly, Their proof.

The perſons are the lord Chancellor of England, and the now biſhop of Landaff, being then no biſhop, but Dr. Field.

The incomparable good parts of the lord Chancellor were highly commended, his place he holds magnified, from whence bounty, juſtice, and mercy were to be diſtributed to the ſubjects, with which he was ſolely truſted, whither all great cauſes were drawn, and from whence no appeal lay for any injuſtice or wrong done, ſave to the parliament.

That the lord Chancellor is accuſed of great bribery and corruption, committed by him in this eminent place, whereof two caſes were alledged:

The one concerning Chriſtopher Awbrey, and the other concerning Edward Egerton. In the cauſe depending in the chancery between this Awbrey and Sir William Bronker, Awbrey feeling ſome hard meaſure, was adviſed to give the lord Chancellor 100 l. the which he delivered to his counſel Sir George Haſtings, and he to the lord Chancellor. This buſineſs proceeding ſlowly notwithſtanding, Awbrey did write divers letters, and delivered them to the lord Chancellor, but could never have any anſwer from his lordſhip; but at laſt delivering another letter, his lordſhip anſwered, If he importuned him he would lay him by the heels.

The proofs of this accuſation are five:

The firſt, Sir George Haſtings related it long ſince unto Sir Charles Montague.

Secondly, the lord Chancellor, fearing this would be complained of, deſired ſilence of Sir George Haſtings.

Thirdly, Sir George Haſtings's teſtimony thereof; which was not voluntary, but urged.

Fourthly, the lord Chancellor deſired Sir George Haſtings to bring the party Awbrey unto him; and promiſed redreſs of the wrong done him.

Fifthly, that the lord Chancellor ſaid unto Sir George Haſtings; if he would affirm the giving of this 100 l. his lordſhip would and muſt deny it upon his honour.

The caſe of Mr. Edward Egerton is this: There being divers ſuits between Edward Egerton and Sir Rowland Egerton in the chancery, Edward Egerton preſented his lordſhip, a little after he was lord Keeper, with a baſon and ewer of 50 l. and above, and afterwards he delivered unto Sir George Haſtings and

Sir Richard Young 400 l. in gold, to be preſented unto his lordſhip. Sir Richard Young preſented it, his lordſhip took it, and poiſed [it], and ſaid, it was too much; and returned anſwer, That Mr. Egerton had not only enriched him, but had laid a tye upon his lordſhip to do him favour in all his juſt cauſes.

The proofs are the teſtimony of Sir George Haſtings, and the teſtimony of Merefil a ſcrivener, thus far: That he took up 700 l. for Mr. Egerton, Mr. Egerton then telling him, that a great part of it was to be given to the lord Chancellor; and that Mr. Egerton afterwards told him, that the 400 l. in gold was given to the lord Chancellor. At this conference was farther declared of a biſhop, who was touched in this buſineſs, upon the bye, whoſe function was much honoured, but his perſon touched herein: this buſineſs depending being ordered againſt Edward Egerton, he procured a new reference thereof from the King to the lord Chancellor: his lordſhip demanded the parties to be bound in 6000 marks, to ſtand to his lordſhip's award: they having entered into that bond, his lordſhip awarded the matter againſt Edward Egerton for Sir Rowland Egerton; and Edward Egerton refuſing to ſtand to the ſaid award, a new bill was exhibited in the chancery; and thereupon his lordſhip ordered that his bond of 6000 marks ſhould be aſſigned unto Sir Rowland Egerton, and he to put the ſame in ſuit in his lordſhip's name.

The biſhop of Landaff, as a friend to Mr. Edward Egerton, adviſeth with Randolph Damport and Butler (which Butler is now dead) that they would procure a ſtay of the decree of that award, and procure a new hearing: it was agreed that 6000 marks ſhould be given for this by Edward Egerton, and ſhared amongſt them, and amongſt certain noble perſons.

A recognizance of 10,000 l. was required from Mr. Egerton to the biſhop for the performance hereof: the biſhop his ſhare of this 6000 marks was to have [been] ſo great, as no court of juſtice would allow: they produce letters of the biſhop naming the ſum, and ſetting down a courſe how this 6000 marks might be raiſed, *viz.* the land in queſtion to be decreed for Mr. Egerton, and out of that the money to be levied; and if this were not effected, then the biſhop *in verbo ſacerdotis* promiſed to deliver up this recognizance to be cancelled. The new recognizance is ſealed accordingly, and Randolph Damport rides to the court, and moved the lord Admiral for his lordſhip's letter to the lord Chancellor herein; but his lordſhip denied to meddle in a cauſe depending in ſuit.

Then the ſaid Randolp Damport aſſayed to get the King's letter, but failed therein alſo: ſo that the good they intended to Mr. Egerton was not effected; and yet the biſhop, though required, refuſed to deliver up the ſaid recognizance, until Mr. Egerton threatened to complain thereof unto the King.

He ſhewed alſo that the commons do purpoſe, that if any more of this kind happen to be complained of before them, they will preſent the ſame to your lordſhips, wherein they ſhall follow the ancient precedents, which ſhew that great perſons have been accuſed for the like in parliament.

They humbly deſire, that foraſmuch as this concerneth a perſon of ſo great eminency, it may not depend long before your lordſhips; that the examination of the proofs may be expedited, and if he be found guilty, then to be puniſhed; if not guilty, the now accuſers to be puniſhed.

THIS being reported, the lord Admiral preſented to the houſe a letter written unto their lordſhips, the tenour whereof followeth:

To the Right Honourable his very good Lords, the Lords Spiritual and Temporal, in the Upper Houſe of Parliament aſſembled.

" *My very good Lords,*

" I Humbly pray your lordſhips all, to make a favourable and true conſtruction " of my abſence. It is no feigning or fainting, but ſickneſs both of my " heart and of my back, though joined with that comfort of mind, that per- " ſuadeth me that I am not far from heaven, whereof I feel the firſt fruits.

" And becauſe, whether I live or die, I would be glad to preſerve my honour " and fame, ſo far as I am worthy; hearing that ſome complaints of baſe " bribery are coming before your lordſhips, my requeſts unto your lordſhips are:

" Firſt, That you will maintain me in your good opinion, without preju- " dice, until my cauſe be heard.

" Secondly, That, in regard I have ſequeſtered my mind at this time, in " great part, from worldly matters, thinking of my account and anſwers in a " higher court; your lordſhips will give me convenient time, according to the " courſe of other courts, to adviſe with my counſel, and to make my anſwer; " wherein, nevertheleſs, my counſel's part will be the leaſt: for I ſhall not, by " the grace of God, trick up an innocency with cavillations, but plainly and " ingenuouſly (as, your lordſhips know, my manner is) declare what I know " or remember.

" Thirdly, That according to the courſe of juſtice I may be allowed to " except to the witneſſes brought againſt me, and to move queſtions to your " lordſhips for their croſs examinations, and likewiſe to produce my own wit- " neſſes for the diſcovery of the truth.

" And laſtly, That if there be any more petitions of like nature, that your " lordſhips would be pleaſed not to take any prejudice or apprehenſion of any " number or muſter of them, eſpecially againſt a judge that makes 2000 " orders and decrees in a year (not to ſpeak of the courſes that have been taken " for hunting out complaints againſt me) but that I may anſwer them, ac- " cording to the rules of juſtice, ſeverally and reſpectively.

" Theſe requeſts, I hope, appear to your lordſhips no other than " juſt. And ſo, thinking myſelf happy to have ſo noble peers, and reverend " prelates to diſcern of my cauſe, and deſiring no privilege of greatneſs for " ſubterfuge of guiltineſs, but meaning, as I ſaid, to deal fairly and plainly " with your lordſhips, and to put myſelf upon your honours and favours; I " pray God to bleſs your counſels and perſons. And reſt

" *Your lordſhips humble ſervant,*

19 March 1620. " FR. ST. ALBAN, *Canc.*"

UPON which letter anſwer was ſent from the lords unto the ſaid lord Chancellor on the ſaid twentieth of March, *viz.* That the lords received his lordſhip's letter, delivered unto them by the lord Admiral: they intend to proceed in his cauſe now before their lordſhips, according to the right rule of juſtice, and they ſhall be glad if his lordſhip ſhall clear his honour therein: to which end they pray his lordſhip to provide for his juſt defence.

And afterwards, on Wedneſday, the twenty firſt of March, the commons ſent a meſſage unto the lords concerning their further complaint againſt the ſaid lord Chancellor, which conſiſted of theſe four points, *viz.*

The firſt in chancery being between the lady Wharton plaintiff, and Wood and others defendants, upon croſs bills; the lord Chancellor upon hearing wholly diſmiſſed them; but upon entry of the order, the croſs bill againſt the lady Wharton was only diſmiſſed: and afterwards, for a bribe of 300 l. given by the lady Wharton to the lord Chancellor, his lordſhip decreed the cauſe farther; and then hearing that Wood and the other defendants complained thereof to the houſe of commons, his lordſhip ſent for them, and damned that decree as unduly gotten; and when the lady Wharton began to complain thereof, his lordſhip ſent for her alſo, and promiſed her redreſs, ſaying, " That decree " is not yet entered."

Secondly, in the ſuit between Hall plaintiff, and Holman defendant; Holman deferring his anſwer, was committed to the Fleet, where he lay twenty weeks, and petitioning to be delivered, was anſwered by ſome about the lord Chancellor, The bill ſhall be decreed againſt him *(pro confeſſo)* unleſs he would enter into a 2000 l. bond to ſtand to the lord Chancellor's order; which he refuſing, his liberty coſt him one way or other one thouſand pounds. Holman being freed out of the Fleet, Hall petitioned to the lord Chancellor, and Holman finding his cauſe to go hard with him on his ſide, complained to the commons;

whereupon

whereupon the lord Chancellor ſent for him, and to pacify him, told him he ſhould have what order he would himſelf.

Thirdly, in the cauſe between Smithwicke and Wiche, the matter in queſtion being for accounts with the merchant, to whom it was referred, certified in the behalf of Smithwicke; yet Smithwicke, to obtain a decree, was told by one Mr. Burrough, one near to the lord Chancellor, that it muſt coſt him 200l. which he paid to Mr. Burrough or Mr. Hunt, to the uſe of the lord Chancellor; and yet the lord Chancellor decreed but one part of the certificate; whereupon he treats again with Mr. Burrough, who demanded another 100l. which Smithwicke alſo paid to the uſe of the lord Chancellor. Then his lordſhip referred the accounts again to the ſame merchant, who certified it again for Smithwicke; yet his lordſhip decreed the ſecond part of the certificate againſt Smithwicke, and the firſt part, which was formerly decreed for him, his lordſhip made doubtful: Smithwicke petitioned to the lord Chancellor for his money again, and Smithwicke had all his money, ſave 20l. kept back by Hunt for a year.

The lord Chief Juſtice alſo delivered three petitions, which his lordſhip received yeſterday from the commons: the firſt by the lady Wharton, the ſecond by Wood and Parjetor and others, and the third by Smithwicke.

The fourth part of the meſſage conſiſts only of inſtructions delivered unto the commons by one Churchill a regiſter, concerning divers bribes and abuſes in the chancery, which the commons deſire may be examined.

THE lords, in the mean time, proceeded to the examination of the complaints, and took divers examinations of witneſſes in the houſe, and appointed a ſelect committee of themſelves to take examinations alſo.

And on Wedneſday, the twenty fourth of April, the Prince his highneſs ſignified unto their lordſhips, that the ſaid lord Chancellor had ſent a ſubmiſſion unto their lordſhips, which was preſently read in *haec verba:*

To the Right Honourable the Lords of the Parliament, in the Upper Houſe aſſembled,

The humble Submiſſion and Supplication of the Lord Chancellor.

" *It may pleaſe your lordſhips,*

" I Shall humbly crave at your lordſhips hands a benign interpretation of that " which I ſhall now write; for words that come from waſted ſpirits, and " an oppreſſed mind, are more ſafe in being depoſited in a noble conſtruction, " than in being circled with any reſerved caution.

" This being moved, and as I hope obtained, in the nature of a protection " for all that I ſhall ſay; I ſhall now make into the reſt of that, wherewith I " ſhall at this time trouble your lordſhips, a very ſtrange entrance: for in the " midſt of a ſtate of as great affliction, as I think a mortal man can endure " (honour being above life) I ſhall begin with the profeſſing of gladneſs in " ſome things.

" The firſt is, That hereafter the greatneſs of a judge, or magiſtrate, ſhall " be no ſanctuary or protection of guiltineſs; which, in few words, is the " beginning of a golden world.

" The next, That after this example, it is like that judges will fly from any " thing that is in the likeneſs of corruption (though it were at a great diſtance) " as from a ſerpent; which tendeth to the purging of the courts of juſtice, and " the reducing them to their true honour and ſplendor.

" And in theſe two points (God is my witneſs) that though it be my fortune " to be the anvil, whereupon thoſe good effects are beaten and wrought, I " take no ſmall comfort.

" But to paſs from the motions of my heart, whereof God is only judge, to " the merits of my cauſe, whereof your lordſhips are judges, under God and " his lieutenant. I do underſtand there hath been heretofore expected from

" me

" me ſome juſtification: and therefore I have choſen one only juſtification, out " of the juſtification of Job. For after the clear ſubmiſſion and confeſſion " which I ſhall now make unto your lordſhips, I hope I may ſay and juſtify " with Job in theſe words, *I have not hid my ſins, as did Adam, nor concealed* " *my faults in my boſom.* This is the only juſtification which I will uſe.

" It reſteth therefore, that, without fig-leaves, I do ingenuouſly confeſs and " acknowledge, that having underſtood the particulars of the charge, not " formally from the houſe, but enough to inform my conſcience and my me- " mory, I find matters ſufficient and full, both to move me to deſert my de- " fence, and to move your lordſhips to condemn and cenſure me.

" Neither will I trouble your lordſhips by ſingling thoſe particulars which " I think might fall off, *Quid te exempta juvat ſpinis de pluribus una?* Neither *Horat.* Ep. " will I prompt your lordſhips to obſerve upon the proofs, where they come lib. ii. " not home, or the ſcruple touching the credit of the witneſſes. Neither will " I repreſent to your lordſhips, how far a defence in divers things mought " extenuate the offence in reſpect of the time and manner of the gift, or the " like circumſtances. But only leave theſe things to ſpring out of your own " noble thoughts, and obſervations of the evidence, and examinations them- " ſelves; and charitably to wind about the particulars of the charge, here and " there, as God ſhall put into your minds; and ſo ſubmit myſelf wholly to your " piety and grace.

" And now, I have ſpoken to your lordſhips as judges, I ſhall ſay a few " words to you as peers and prelates; humbly commending my cauſe to your " noble minds, and magnanimous affections.

" Your lordſhips are not ſimply judges, but parliamentary judges; you have " a farther extent of arbitrary power, than other courts. And if your lordſhips " be not tied by ordinary courſes of courts or precedents in points of ſtrictneſs " and ſeverity, much more in points of mercy and mitigation.

" And yet if any thing which I ſhall move, mought be contrary to your " worthy ends to introduce a reformation, I ſhould not ſeek it: but herein I " beſeech your lordſhips to give me leave to tell you a ſtory. Titus Manlius " took his ſon's life for giving battle againſt the prohibition of his general: " not many years after the like ſeverity was purſued by Papirius Curſor, the " dictator, againſt Quintus Maximus; who being upon the point to be ſen- " tenced, by the interceſſion of ſome principal perſons of the ſenate, was " ſpared: whereupon Livy maketh this grave and gracious obſervation; *Neque* " *minus firmata eſt diſciplina militaris periculo Quinti Maximi, quam miſerabili* " *ſupplicio Titi Manlii.* The diſcipline of war was no leſs eſtabliſhed by the " queſtioning of Quintus Maximus, than by the puniſhing of Titus Manlius. " And the ſame reaſon is of the reformation of juſtice; for the queſtioning of " men of eminent places hath the ſame terror, though not the ſame rigour with " the puniſhment.

" But my caſe ſtandeth not there; for my humble deſire is, that his Majeſty " would take the ſeal into his hands; which is a great downfal, and may ſerve, " I hope, in itſelf, for an expiation of my faults.

" Therefore, if mercy and mitigation be in your power, and do no ways " croſs your noble ends, why ſhould I not hope of your lordſhips favour and " commiſeration?

" Your lordſhips will be pleaſed to behold your chief pattern, the King " our ſovereign, a King of incomparable clemency, and whoſe heart is inſcru- " table for wiſdom and goodneſs. Your lordſhips will remember that there " ſat not theſe hundred years before, a Prince in your houſe, and never ſuch a " Prince, whoſe preſence deſerves to be made memorable by records and acts " mixed of mercy and juſtice. Your lordſhips are either nobles (and com- " paſſion ever beateth in the veins of noble blood) or reverend prelates, who " are the ſervants of him, who would not *break the bruiſed reed, nor quench* " *the ſmoaking flax.* You all ſit upon one high ſtage, and therefore cannot " but be more ſenſible of the changes of the world, and of the fall of any of " high place.

" Neither will your lordſhips forget that there are *vitia temporis*, as well as " *vitia hominis*; and that the beginning of reformations hath the contrary " power of the pool of Betheſda; for that had ſtrength to cure him only, that " was firſt caſt in, and this hath commonly ſtrength to hurt him only that is " firſt caſt in. And for my part, I wiſh it may ſtay there and go no farther.

" Laſtly, I aſſure myſelf, your lordſhips have a noble feeling of me, as a " member of your own body, and one that in this very ſeſſion had ſome taſte " of your loving affections; which, I hope, was not a lightening before the " death of them, but rather a ſpark of that grace, which now in the con- " cluſion will more appear.

" And therefore my humble ſuit to your lordſhips is, That my penitent " ſubmiſſion may be my ſentence, and the loſs of the ſeal my puniſhment; " and that your lordſhips will ſpare any farther ſentence, but recommend me " to his Majeſty's grace and pardon for all that is paſt. God's holy Spirit be " among you.

" *Your lordſhips humble ſervant, and ſuppliant,*

22 April 1621. " FR. ST. ALBAN, *Canc.*"

THE lords having conſidered of this ſubmiſſion, and heard the collections of corruptions charged upon the ſaid lord Chancellor, and the proofs thereof read, they ſent a copy of the ſame without the proofs unto him the ſaid lord Chancellor, by Mr. Baron Denham, and Mr. Attorney-General, with this meſſage from their lordſhips, *viz.*

THAT the lord Chancellor's confeſſion is not fully ſet down by his lordſhip, in the ſaid ſubmiſſion, for three cauſes.

1. Firſt, his lordſhip confeſſeth not any particular bribe or corruption.

2. Nor ſheweth how his lordſhip heard the charge thereof.

3. The confeſſion, ſuch as it is, is afterwards extenuated in the ſame ſubmiſſion; and therefore the lords have ſent him a particular of the charge, and do expect his anſwer to the ſame with all convenient expedition.

UNTO which meſſage the lord Chancellor anſwered, " that he would return " the lords an anſwer with ſpeed."

And on the twenty fifth of April the lords conſidered of the lord Chancellor's ſaid anſwer, ſent unto their meſſage yeſterday, and ſent a ſecond meſſage unto his lordſhip to this effect, by the ſaid Mr. Baron Denham, and Mr. Attorney-General, viz.

The lords having received a doubtful anſwer unto the meſſage their lordſhips ſent him yeſterday; therefore they now ſend to him again to know of his lordſhip, directly and preſently, whether his lordſhip will make his confeſſion, or ſtand upon his defence.

Anſwer returned by the ſaid meſſengers, viz.

" The lord Chancellor will make no manner of defence to the charge, " but meaneth to acknowledge corruption, and to make a particular confeſ- " ſion to every point, and after that an humble ſubmiſſion; but humbly craves " liberty, that where the charge is more full than he finds the truth of the " fact, he may make declaration of the truth in ſuch particulars, the charge " being brief, and containing not all circumſtances."

The lords ſent the ſame meſſengers back again to the lord Chancellor, to let him know, that their lordſhips have granted him time until Monday next, the thirtieth * of April, by ten in the morning, to ſend ſuch confeſſion and ſubmiſſion as his lordſhip intends to make.

On which Monday the lord Chancellor ſent the ſame accordingly, and that follows in *haec verba*, viz.

* I preſume it ſhould be the twenty ninth.

To

To the Right Honourable the Lords ſpiritual and temporal, in the high court of Parliament aſſembled.

The humble Confeſſion and Submiſſion of me the lord Chancellor.

UPON adviſed conſideration of the charge, deſcending into my own conſcience, and calling my memory to account, ſo far as I am able, I do plainly and ingenuouſly confeſs that I am guilty of corruption, and do renounce all defence, and put myſelf upon the grace and mercy of your lordſhips.

The particulars I confeſs and declare to be as followeth.

To the firſt article of the charge, viz. " In the cauſe between Sir Rowland " Egerton and Edward Egerton, the lord Chancellor received 300 l. on the " part of Sir Rowland Egerton, before he had decreed the cauſe."

I do confeſs and declare, that upon a reference from his Majeſty of all ſuits and controverſies between Sir Rowland Egerton and Edward Egerton, both parties ſubmitted themſelves to my award by recognizances reciprocal in ten thouſand marks apiece; thereupon, after divers hearings, I made my award with the advice and conſent of my lord Hobard: the award was perfected and publiſhed to the parties, which was in February. Then ſome days after, the three hundred pounds, mentioned in the charge, was delivered unto me. Afterwards Mr. Edward Egerton fled off from the award; then in midſummer term following a ſuit was begun in chancery by Sir Rowland to have the award confirmed, and upon that ſuit was the decree made mentioned in the article.

The ſecond article of the charge, viz. " In the ſame cauſe he received from " Edward Egerton 400 l."

I confeſs and declare, that ſoon after my firſt coming to the ſeal, being a time when I was preſented by many, the 400 l. mentioned in the ſaid charge, was delivered unto me in a purſe, and, as I now call to mind, from Mr. Edward Egerton; but, as far as I can remember, it was expreſſed by them that brought it to be for favours paſt, and not in reſpect of favours to come.

The third article of the charge, viz. " In the cauſe between Hody and Hody, " he received a dozen of buttons of the value of 50 l. about a fortnight after " the cauſe was ended:"

I confeſs and declare, that, as it is laid in the charge, about a fortnight after the cauſe was ended, it being a ſuit for a great inheritance, there were gold buttons about the value of 50 l. as is mentioned in the charge, preſented unto me, as I remember, by Sir Thomas Perrot and the party himſelf.

To the fourth article of the charge, viz. " In a cauſe between the lady " Wharton and the coheirs of Sir Francis Willoughby, he received of the lady " Wharton three hundred and ten pounds:"

I confeſs and declare, that I did receive of the lady Wharton, at two ſeveral times, as I remember, in gold, 200 l. and 100 pieces; and this was certainly *pendente lite:* but yet I have a vehement ſuſpicion that there was ſome ſhuffling between Mr. Shute and the regiſter in entering ſome orders, which afterwards I did diſtaſte.

To the fifth article of the charge, viz. " In Sir Thomas Monk's cauſe he " received from Sir Thomas Monk, by the hands of Sir Henry Holmes, 110 l. " but this was three quarters of a year after the ſuit was ended."

I confeſs it to be true, that I received 100 pieces; but it was long after the ſuit ended, as is contained in the charge.

To the ſixth article of the charge, viz. " In the cauſe between Sir John " Trevor and Aſcue, he received on the part of Sir John Trevor 100 l."

I confeſs and declare, that I received at new year's tide 100 l. from Sir John Trevor; and, becauſe it came as a new year's gift, I neglected to enquire whether the cauſe was ended or depending; but ſince I find, that though the cauſe was then diſmiſſed to a trial at law, yet the equity is reſerved, ſo as it was in that kind *pendente lite.*

To the ſeventh article of the charge, viz. " In the cauſe between Holman " and Young, he received of Young 100 l. after the decree made for him :"

I confeſs and declare, that, as I remember, a good while after the cauſe ended, I received 100 l. either by Mr. Toby Matthew, or from Young himſelf: but whereas I have underſtood that there was ſome money given by Holman to my ſervant Hatcher, to that certainly I was never made privy.

To the eighth article of the charge, " In the cauſe between Fiſher and " Wrenham, the lord Chancellor, after the decree paſſed, received a ſuit of " hangings worth one hundred and threeſcore pounds and better, which Fiſher " gave him by advice of Mr. Shute :"

I confeſs and declare, that ſome time after the decree paſſed, I being at that time upon remove to York-houſe, I did receive a ſuit of hangings of the value, I think, mentioned in the charge, by Mr. Shute, as from Sir Edward Fiſher, towards the furniſhing of my houſe, as ſome others, that were no ways ſuitors, did preſent me with the like about that time.

To the ninth article of the charge, " In the cauſe between Kennedy " and Vanlore, he received a rich cabinet from Kennedy, prized at 800 l."

I confeſs and declare, that ſuch a cabinet was brought to my houſe, though nothing near half the value; and that I ſaid to him that brought it, that I came to view it, and not to receive it; and gave commandment that it ſhould be carried back; and was offended when I heard it was not: and ſome year and an half after, as I remember, Sir John Kennedy having all that time refuſed to take it away, as I am told by my ſervants, I was petitioned by one Pinkney, that it might be delivered to him, for that he ſtood engaged for the money that Sir John Kennedy paid for it: and thereupon Sir John Kennedy wrote a letter to my ſervant Sherborne, with his own hand, deſiring I would not do him that diſgrace, as to return that gift back, much leſs to put it into a wrong hand: and ſo it remains yet ready to be returned to whom your lordſhips ſhall appoint.

To the tenth article of the charge, viz. " He borrowed of Vanlore 1000 l. " upon his own bond at one time, and the like ſum at another time, upon his " lordſhip's own bill, ſubſcribed by Mr. Hunt his man :"

I confeſs and declare, that I borrowed the money in the article ſet down, and that this is a true debt; and I remember well that I wrote a letter from Kew, about a twelve month ſince, to a friend about the King; wherein I deſired, that whereas I owed Peter Vanlore 2000 l. his Majeſty would be pleaſed to grant me ſo much out of his fine, ſet upon him in the ſtar-chamber.

To the eleventh article of the charge, viz. " He received of Richard Scott " 200 l. after his cauſe was decreed, but upon a precedent promiſe; all which " was tranſacted by Mr. Shute :"

I confeſs and declare, that ſome fortnight after, as I remember, that the decree paſſed, I received 200 l. as from Mr. Scott, by Mr. Shute: but precedent promiſe or tranſaction by Mr. Shute, certain I am, I knew of none.

To the twelfth article of the charge, viz. " He received in the ſame cauſe, " on the part of Sir John Lenthall, 100 l."

I confeſs and declare, that ſome month after, as I remember, that the decree paſſed, I received 100 l. by my ſervant Sherborne, as from Sir John Lenthall, who was not in the adverſe party to Scott, but a third perſon, relieved by the ſame decree, in the ſuit of one Power.

To the thirteenth article of the charge, viz. " He received of Mr. Worth " 100 l. in reſpect of the cauſe between him and Sir Arthur Mainwaring :"

I confeſs and declare, that this cauſe, being a cauſe for inheritance of good value, was ended by my arbitrament, and conſent of parties, and ſo a decree paſſed of courſe; and ſome month after the cauſe was ended, the 100 l. mentioned in the ſaid article, was delivered to me by my ſervant Hunt.

To the fourteenth article of the charge, viz. " He received of Sir Ralph " Hanſbye, having a cauſe depending before him, 500 l."

I confeſs and declare, that there were two decrees, one as I remember for the inheritance, and the other for the goods and chattels, but all upon one bill;

and

and ſome good time after the firſt decree, and before the ſecond, the ſaid 500 l. was delivered unto me by Mr. Toby Matthew; ſo as I cannot deny but it was, upon the matter, *pendente lite*.

To the fifteenth article of the charge, viz. " William Compton being to " have an extent for a debt of 1200 l. the lord Chancellor ſtayed it, and wrote " his letter, upon which, part of the debt was paid preſently, and part at a " future day: the lord Chancellor hereupon ſends to borrow 500 l. and becauſe " Compton was to pay 400 l. to one Huxley, his lordſhip requires Huxley to " forbear ſix months; and thereupon obtains the money from Compton: the " money being unpaid, ſuit grows between Huxley and Compton in chancery, " where his lordſhip decrees Compton to pay Huxley the debt with damage " and coſts, when it was in his own hands:"

I do declare, that in my conſcience the ſtay of the extent was juſt, being an extremity againſt a nobleman, by whom Compton could be no loſer; the money was plainly borrowed of Compton upon bond with intereſt, and the meſſage to Huxley was only to entreat him to give Compton a longer day, and in no ſort to make me debtor or reſponſable to Huxley; and therefore, though I was not ready to pay Compton his money, as I would have been glad to have done, ſave only 100 l. which is paid, I could not deny juſtice to Huxley in as ample manner as if nothing had been between Compton and I; but if Compton hath been damnified in my reſpect, I am to conſider it to Compton.

To the ſixteenth article of the charge, viz. " In the cauſe between Sir Wil- " liam Bronker and Awbrey, the lord Chancellor received from Awbrey 100 l."

I do confeſs and declare, that the money was given and received, but the manner of it I leave to the witneſſes.

To the ſeventeenth article of the charge, viz. " In the lord Montague's " cauſe, he received from the lord Montague 600 or 700 l. and more was to " be paid at the ending of the cauſe:"

I confeſs and declare there was money given, and, as I remember, to Mr. Bevis Thelwall, to the ſum mentioned in the article, after the cauſe was decreed; but I cannot ſay it was ended: for there have been many orders ſince, cauſed by Sir Francis Inglefeild's contempts; and I do remember, that when Thelwall brought the money, he ſaid that my lord would be yet farther thankful if he could once get his quiet; to which ſpeech I gave little regard.

To the eighteenth article of the charge, viz. " In the cauſe of Mr. Dunch, " he received from Mr. Dunch 200 l."

I confeſs and declare, that it was delivered by Mr. Thelwall to Hatcher my ſervant for me, as I think, ſome time after the decree; but I cannot preciſely inform myſelf of the time.

To the nineteenth article of the charge, viz. " In the cauſe between Rey- " nell and Peacocke, he received from Reynell 200 l. and a diamond ring " worth 500 or 600 l."

I confeſs and declare, that at my firſt coming to the ſeal, when I was at Whitehall, my ſervant Hunt delivered me 200 l. from Sir George Reynell, my near ally, to be beſtowed upon furniture of my houſe; adding farther, that he had received divers former favours from me; and this was, as I verily think, before any ſuit begun: the ring was certainly received *pendente lite*; and though it were at new year's tide, it was too great a value for a new year's gift; though, as I take it, nothing near the value mentioned in the article.

To the twentieth article of the charge, viz. " That he took of Peacocke " 100 l. without intereſt, ſecurity, or time of payment."

I confeſs and declare, that I received of Mr. Peacocke 100 l. at Dorſet-houſe, at my firſt coming to the ſeal, as a preſent; at which time no ſuit was begun; and at the ſummer after, I ſent my then ſervant Liſter to Mr. Rolfe, my good friend and neighbour at St. Albans, to uſe his means with Mr. Peacocke (who was accounted a moneyed man) for the borrowing of 500 l. and after by my ſervant Hatcher for borrowing of 500 l. more, which Mr. Rolfe procured; and told me at both times, it ſhould be without intereſt, ſcript or note, and that I ſhould take my own time for payment of it.

To the twenty firſt article of the charge, viz. "In the cauſe between Smith-
"wicke and Wiche, he received from Smithwicke 200 l. which was repaid:"

I confeſs and declare, that my ſervant Hunt did, upon his account (being my receiver of the fines upon original writs) charge himſelf with 200 l. formerly received of Smithwicke; which, after that I had underſtood the nature of it, I ordered him to repay, and to defalke it out of his accounts.

To the two and twentieth article of the charge, viz. "In the cauſe of Sir
"Henry Ruſwell, he received money from Ruſwell, but it is not certain how
"much:"

I confeſs and declare, that I received money from my ſervant Hunt, as from Mr. Ruſwell, in a purſe; and whereas the ſum in the article being indefinite, I confeſs [it] to be 300 or 400 l. and it was about ſome month after the cauſe was decreed; in which decree I was aſſiſted by two of the judges.

To the twenty third article of the charge, viz. "In the cauſe of Mr. Barker,
"the lord Chancellor received from Barker 700 l."

I confeſs and declare, that the ſum mentioned in the article was received from Mr. Barker ſome time after the decree paſt.

To the twenty fourth, twenty fifth, twenty ſixth articles of the charge, viz. The twenty fourth, "There being a reference from his Majeſty to his lordſhip
"of a buſineſs between the grocers and the apothecaries, the lord Chancellor
"received of the grocers 200 l." The twenty fifth article, "In the ſame
"cauſe, he received of the apothecaries, that ſtood with the grocers, a taſter
"of gold worth between 400 and 500 l. and a preſent of ambergreaſe." And the twenty ſixth article, "He received of a new company of apothecaries, that
"ſtood againſt the grocers, 100 l."

To theſe I confeſs and declare, that the ſeveral ſums from the three parties were received; and for that it was no judicial buſineſs, but a concord of compoſition between the parties, and that as I thought all had received good, and they were all three common purſes, I thought it the leſs matter to receive that which they voluntarily preſented; for if I had taken it in the nature of a corrupt bribe, I knew it could not be concealed, becauſe it muſt needs be put to account to the three ſeveral companies.

To the twenty ſeventh article of the charge, viz. "He took of the French
"merchants 1000 l. to conſtrain the vintners of London to take from them
"1,500 tuns of wine; to accompliſh which, he uſed very indirect means, by
"colour of his office and authority, without bill or ſuit depending, terrifying
"the vintners by threats, and by impriſonments of their perſons, to buy wines
"whereof they had no need, nor uſe, at higher rates than they were vendible."

I do confeſs and declare, that Sir Thomas Smith did deal with me in behalf of the French company; informing me, that the vintners by combination would not take off their wines at any reaſonable prices; that it would deſtroy their trade, and ſtay their voyage for that year; and that it was a fair buſineſs, and concerned the ſtate; and he doubted not but I ſhould receive thanks from the King, and honour by it; and that they would gratify me with a thouſand pounds for my travail in it: whereupon I treated between them by way of perſuaſion; and to prevent any compulſory ſuit, propounding ſuch a price as the vintners might be gainers 6 l. in a tun, as it was then maintained unto me. And after the merchants petitioning to the King, and his Majeſty recommending this buſineſs unto me, as a buſineſs that concerns his cuſtoms and the navy, I dealt more earneſtly and peremptorily in it; and, as I think, reſtrained in the meſſengers hand for a day or two ſome that were the moſt ſtiff; and afterwards the merchants preſented me with 1000 l. out of their common purſe, and acknowledging themſelves that I had kept them from a kind of ruin, and ſtill maintaining to me, that the vintners, if they were not infatiably minded, had a very competent gain: this is the merits of the cauſe, as it there appears to me.

To the twenty eighth article of the charge, viz. "The lord Chancellor hath
"given way to great exactions by his ſervants, both in reſpect of private ſeals,
"and otherwiſe for ſealing of injunctions:"

I confeſs it was a great fault of neglect in me that I looked no better to my ſervants.

This declaration I have made to your lordſhips, with a ſincere mind, humbly craving that if there ſhould be any miſtake, your lordſhips would impute it to want of memory, and not to any deſire of mine to obſcure truth, or palliate any thing; for I do now again confeſs, that in the points charged upon me, though they ſhould be taken, as myſelf have declared them, there is a great deal of corruption and neglect, for which I am heartily ſorry, and ſubmit myſelf to the judgment, grace, and mercy of the court.

For extenuation I will uſe none concerning the matters themſelves; only it may pleaſe your lordſhips, out of your nobleneſs, to caſt your eyes of compaſſion upon my perſon and eſtate. I was never noted for any avaritious man; and the apoſtle ſaith, that *covetouſneſs is the root of all evil.* I hope alſo that your lordſhips do the rather find me in the ſtate of grace, for that in all theſe particulars there are few or none that are not almoſt two years old; whereas thoſe that have an habit of corruption do commonly wax worſe: ſo that it hath pleaſed God to prepare me by precedent degrees of amendment to my preſent penitency; and for my eſtate, it is ſo mean and poor, as my care is now chiefly to ſatisfy my debts.

And ſo fearing I have troubled your lordſhips too long, I ſhall conclude with an humble ſuit unto you, that if your lordſhips proceed to ſentence, your ſentence may not be heavy to my ruin, but gracious and mixt with mercy; and not only ſo, but that you would be noble interceſſors for me to his Majeſty likewiſe for his grace and favour.

Your lordſhips humble ſervant and ſuppliant,

Fr. St. Alban, *Canc.*

The lords having heard this confeſſion and ſubmiſſion read, theſe lords undernamed, viz. the earl of Pembroke, lord Chamberlain; the earl of Arundel, the earl of Southampton, the biſhop of Durham, the biſhop of Wincheſter, the biſhop of Coventry and Litchfield, the lord Wentworth, the lord Cromwell, the lord Sheffield, the lord North, the lord Chandos, the lord Hunſdon, were ſent to him the ſaid lord Chancellor, and ſhewed him the ſaid confeſſion, and told him, that the lords do conceive it to be an ingenuous and full confeſſion; and demanded of him, whether it be his own hand that is ſubſcribed to the ſame, and whether he will ſtand to it or no; unto which the ſaid lord Chancellor anſwered, viz.

"My lords, it is my act, my hand, my heart: I beſeech your lordſhips to "be merciful to a broken reed."

The which anſwer being reported to the houſe, it was agreed by the houſe, to move his Majeſty to ſequeſter the ſeal; and the lords entreated the Prince's Highneſs, that he would be pleaſed to move the King: whereunto his Highneſs condeſcended; and the ſame lords, which went to take the acknowledgement of the lord Chancellor's hand, were appointed to attend the Prince to the King, with ſome other lords added: and his Majeſty did not only ſequeſter the ſeal, but awarded a new commiſſion unto the lord Chief Juſtice to execute the place of the Chancellor or lord Keeper.

Parliament. dat. *primo Maii*, and on Wedneſday the ſecond of May the ſaid commiſſion being read, their lordſhips agreed to proceed to ſentence the lord Chancellor to-morrow morning; wherefore the gentleman uſher, and ſerjeant at arms, attendants on the upper houſe, were commanded to go and ſummon him the ſaid lord Chancellor to appear in perſon before their lordſhips to-morrow morning by nine of the clock; and the ſaid ſerjeant was commanded to take his mace with him, and to ſhew it unto his lordſhip at the ſaid ſummons: but they found him ſick in bed; and being ſummoned, he anſwered, that he was ſick, and proteſted that he feigned not this for any excuſe; for if he had been well he would willingly have come.

The

The lords reſolved to proceed notwithſtanding againſt the ſaid lord Chancellor; and therefore, on Thurſday the third day of May, their lordſhips ſent their meſſage unto the commons to this purpoſe, viz. That the lords are ready to give judgment againſt the lord viſcount St. Alban, lord Chancellor, if they with their Speaker will come to demand it. And the commons being come, the Speaker came to the bar, and making three low obeyſances, ſaid:

THE knights, citizens, and burgeſſes, of the commons houſe of parliament, have made complaints unto your lordſhips of many exorbitant offences of bribery and corruption committed by the lord Chancellor; we underſtand that your lordſhips are ready to give judgment upon him for the ſame; wherefore I their Speaker, in their name, do humbly demand, and pray judgment againſt him the lord Chancellor, as the nature of his offence and demerits do require.

The lord Chief Juſtice anſwered,

Mr. SPEAKER,

Upon complaint of the commons againſt the viſcount St. Alban, lord Chancellor, this high court hath hereby, and by his own confeſſion, found him guilty of the crimes and corruptions complained of by the commons, and of ſundry other crimes and corruptions of like nature.

And therefore this high court, having firſt ſummoned him to attend, and having his excuſe of not attending by reaſon of infirmity and ſickneſs, which, he proteſted, was not feigned, or elſe he would moſt willingly have attended; doth nevertheleſs think fit to proceed to judgment: and therefore this high court doth adjudge,

I. That the lord viſcount St. Alban, lord Chancellor of England, ſhall undergo fine and ranſom of forty thouſand pounds.

II. That he ſhall be impriſoned in the Tower during the King's pleaſure.

III. That he ſhall for ever be uncapable of any office, place, or employment, in the ſtate or commonwealth.

IV. That he ſhall never ſit in parliament, nor come within the verge of the court.

This is the judgment and reſolution of this high court.

WORKS

HISTORICAL.

Kus HENKA

K E I

H I S

THE

HISTORY

OF THE

REIGN

OF

King HENRY the Seventh.

TO THE

Moſt Illuſtrious and moſt Excellent

PRINCE CHARLES,

PRINCE of WALES,

DUKE of CORNWALL,

EARL of CHESTER, etc.

IT MAY PLEASE YOUR HIGHNESS,

IN part of my acknowledgement to your Highneſs, I have endeavoured to do honour to the memory of the laſt King of England, that was anceſtor to the King your father, and yourſelf; and was that King to whom both unions may in a ſort refer: that of the roſes being in him conſummate, and that of the kingdoms by him begun: beſides, his times deſerve it. For he was a wiſe man, and an excellent King; and yet the times were rough, and full of mutations, and rare accidents. And it is with times, as it is with ways: Some are more up-hill and down-hill, and ſome are more flat and plain; and the one is better for the liver, and the other for the writer.

I have not flattered him, but took him to life as well, as I could, fitting so far off, and having no better light. It is true, your Highneſs hath a living pattern, incomparable, of the King your father: But it is not amiſs for you alſo to ſee one of theſe ancient pieces. God preſerve your Highneſs.

Your Highneſs's moſt humble

and devoted ſervant,

FRANCIS ST. ALBAN.

THE HISTORY of the REIGN OF King HENRY the Seventh.

AFTER that Richard, the third of that name, King in fact only, but tyrant both in title and regiment, and ſo commonly termed and reputed in all times ſince, was, by the divine revenge favouring the deſign of an exiled man, overthrown and ſlain at Boſworth-field; there ſucceeded in the kingdom the earl of Richmond, thenceforth ſtyled Henry the ſeventh. The King, immediately after the victory, as one that had been bred under a devout mother, and was in his nature a great obſerver of religious forms, cauſed *Te Deum laudamus* to be ſolemnly ſung in the preſence of the whole army upon the place, and was himſelf with general applauſe, and great cries of joy, in a kind of military election, or recognition, ſaluted King. Mean while the body of Richard, after many indignities and reproaches (the *diriges* and obſequies of the common people towards tyrants) was obſcurely buried. For though the King of his nobleneſs gave charge unto the friars of Leiceſter to ſee an honourable interment to be given to it, yet the religious people themſelves (being not free from the humours of the vulgar) neglected it; wherein nevertheleſs they did not then incur any man's blame or cenſure: no man thinking any ignominy or contumely unworthy of him, that had been the executioner of King Henry the ſixth (that innocent Prince) with his own hands; the contriver of the death of the duke of Clarence his brother; the murtherer of his two nephews (one of them his lawful King in the preſent, and the other in the future, failing of him) and vehemently ſuſpected to have been the impoiſoner of his wife, thereby to make vacant his bed, for a marriage within the degrees forbidden. And although he were a Prince in military virtue approved, jealous of the honour of the Engliſh nation, and likewiſe a good law-maker, for the eaſe and ſolace of the common people; yet his cruelties and parricides, in the opinion of all men, weighed down his virtues and merits; and, in the opinion of wiſe men, even thoſe virtues themſelves were conceived to be rather feigned and affected things to ſerve his ambition, than true qualities ingenerate in his judgment or nature. And therefore it was noted by men of great underſtanding (who ſeeing his after-acts, looked back upon his former proceedings) that even in the time of King Edward his brother he was not without ſecret trains and mines to turn envy and hatred upon his brother's government; as having an expectation and a kind of divination, that the King, by reaſon of his many diſorders, could not be of long life, but was like to leave his ſons of tender years; and then he knew well, how eaſy a ſtep it was, from the place of a protector, and firſt Prince of the blood, to the crown. And that out of this deep root of ambition it ſprung, that as well at the treaty of peace that paſſed between Edward the fourth, and Lewis the eleventh of France, concluded by interview of both Kings at Piqueny, as upon all other occaſions, Richard, then duke of Glouceſter, ſtood ever upon the ſide of honour, raiſing his own reputation to the diſadvantage of the King his brother, and drawing the eyes of all (eſpecially of the nobles and ſoldiers) upon himſelf; as if the King, by his voluptuous life and mean marriage, were become effeminate and leſs ſenſible of honour, and reaſon of ſtate, than was fit for a King. And as for the politick and wholeſome laws which were enacted in his time, they were interpreted to be but the brocage of an uſurper, thereby to woo and win the hearts of the people, as being conſcious to himſelf, that the true obligations of ſovereignty in him failed, and were wanting. But King Henry, in the very entrance of his reign, and the inſtant of time when the kingdom was caſt into his arms, met with a point of great difficulty, and knotty

knotty to ſolve, able to trouble and confound the wiſeſt King in the newneſs of his eſtate; and ſo much the more, becauſe it could not endure a deliberation, but muſt be at once deliberated and determined. There were fallen to his lot, and concurrent in his perſon, three ſeveral titles to the imperial crown. The firſt, the title of the lady Elizabeth, with whom, by precedent pact with the party that brought him in, he was to marry. The ſecond, the ancient and long diſputed title (both by plea and arms) of the houſe of Lancaſter, to which he was inheritor in his own perſon. The third, the title of the ſword or conqueſt, for that he came in by victory of battle, and that the King in poſſeſſion was ſlain in the field. The firſt of theſe was faireſt, and moſt like to give contentment to the people, who by two and twenty years reign of King Edward the fourth had been fully made capable of the clearneſs of the title of the white roſe, or houſe of York; and, by the mild and plauſible reign of the ſame King toward his latter time were become affectionate to that line. But then it lay plain before his eyes, that if he relied upon that title, he could be but a King at courteſy, and have rather a matrimonial than a regal power; the right remaining in his Queen, upon whoſe deceaſe, either with iſſue, or without iſſue, he was to give place, and be removed. And though he ſhould obtain by parliament to be continued, yet he knew there was a very great difference between a King that holdeth his crown by a civil act of eſtates, and one that holdeth it originally by the law of nature, and deſcent of blood. Neither wanted there even at that time ſecret rumours and whiſperings (which afterwards gathered ſtrength and turned to great troubles) that the two young ſons of King Edward the fourth, or one of them (which were ſaid to be deſtroyed in the Tower) were not indeed murthered, but conveyed ſecretly away, and were yet living: which, if it had been true, had prevented the title of the lady Elizabeth. On the other ſide, if he ſtood upon his own title of the houſe of Lancaſter, inherent in his perſon, he knew it was a title condemned by parliament, and generally prejudged in the common opinion of the realm, and that it tended directly to the diſinheriſon of the line of York, held then the indubitate heirs of the crown. So that if he ſhould have no iſſue by the lady Elizabeth, which ſhould be deſcendents of the double line, then the ancient flames of diſcord and inteſtine wars, upon the competition of both houſes, would again return and revive.

As for conqueſt, notwithſtanding Sir William Stanley, after ſome acclamations of the ſoldiers in the field, had put a crown of ornament (which Richard wore in the battle, and was found amongſt the ſpoils) upon King Henry's head, as if there were his chief title; yet he remembered well upon what conditions and agreements he was brought in; and that to claim as conqueror, was to put as well his own party, as the reſt, into terror and fear; as that which gave him power of diſannulling of laws, and diſpoſing of mens fortunes and eſtates, and the like points of abſolute power, being in themſelves ſo harſh and odious, as that William himſelf, commonly called the conqueror, howſoever he uſed and exerciſed the power of a conqueror to reward his Normans, yet he forbore to uſe that claim in the beginning, but mixed it with a titulary pretence, grounded upon the will and deſignation of Edward the confeſſor. But the King, out of the greatneſs of his own mind, preſently caſt the die; and the inconveniencies appearing unto him on all parts, and knowing there could not be any interreign, or ſuſpenſion of title, and preferring his affection to his own line and blood, and liking that title beſt which made him independent; and being in his nature and conſtitution of mind not very apprehenſive or forecaſting of future events afar off, but an entertainer of fortune by the day; reſolved to reſt upon the title of Lancaſter as the main, and to uſe the other two, that of marriage, and that of battle, but as ſupporters, the one to appeaſe ſecret diſcontents, and the other to beat down open murmur and diſpute; not forgetting that the ſame title of Lancaſter had formerly maintained a poſſeſſion of three deſcents in the crown; and might have proved a perpetuity, had it not ended in the weakneſs and inability of the laſt Prince. Whereupon the King preſently that very day, being the two and twentieth of Auguſt, aſſumed the ſtyle of King in his own name, without mention of the lady Elizabeth at all, or any relation thereunto. In

which courſe he ever after perſiſted; which did ſpin him a thread of many ſeditions and troubles. The King, full of theſe thoughts, before his departure from Leiceſter, diſpatched Sir Robert Willoughby to the caſtle of Sheriff-Hutton in Yorkſhire, where were kept in ſafe cuſtody, by King Richard's commandment, both the lady Elizabeth, daughter of King Edward, and Edward Plantagenet, ſon and heir to George duke of Clarence. This Edward was by the King's warrant delivered from the conſtable of the caſtle to the hand of Sir Robert Willoughby; and by him with all ſafety and diligence conveyed to the Tower of London, where he was ſhut up cloſe priſoner. Which act of the King's (being an act merely of policy and power) proceeded not ſo much from any apprehenſion he had of doctor Shaw's tale at Paul's croſs, for the baſtarding of Edward the fourth's iſſues, in which caſe this young gentleman was to ſucceed (for that fable was ever exploded) but upon a ſettled diſpoſition to depreſs all eminent perſons of the line of York. Wherein ſtill the King, out of ſtrength of will, or weakneſs of judgment, did uſe to ſhew a little more of the party, than of the King.

For the lady Elizabeth, ſhe received alſo a direction to repair with all convenient ſpeed to London, and there to remain with the Queen dowager her mother; which accordingly ſhe ſoon after did, accompanied with many noblemen and ladies of honour. In the mean ſeaſon the King ſet forwards by eaſy journeys to the city of London, receiving the acclamations and applauſes of the people as he went, which indeed were true and unfeigned, as might well appear in the very demonſtrations and fulneſs of the cry. For they thought generally, that he was a Prince as ordained and ſent down from heaven, to unite and put to an end the long diſſenſions of the two houſes; which although they had had, in the times of Henry the fourth, Henry the fifth, and a part of Henry the ſixth, on the one ſide, and the times of Edward the fourth on the other, lucid intervals and happy pauſes; yet they did ever hang over the kingdom, ready to break forth into new perturbations and calamities. And as his victory gave him the knee, ſo his purpoſe of marriage with the lady Elizabeth gave him the heart; ſo that both knee and heart did truly bow before him.

He on the other ſide with great wiſdom (not ignorant of the affections and fears of the people) to diſperſe the conceit and terror of a conqueſt, had given order, that there ſhould be nothing in his journey like unto a warlike march or manner; but rather like unto the progreſs of a King in full peace and aſſurance.

He entered the city upon a Saturday, as he had alſo obtained the victory upon a Saturday; which day of the week, firſt upon an obſervation, and after upon memory and fancy, he accounted and choſe as a day proſperous unto him.

The mayor and companies of the city received him at Shoreditch; whence with great and honourable attendance, and troops of noblemen, and perſons of quality, he entered the city; himſelf not being on horſeback, or in any open chair, or throne, but in a cloſe chariot, as one that having been ſometimes an enemy to the whole ſtate, and a proſcribed perſon, choſe rather to keep ſtate, and ſtrike a reverence into the people, than to fawn upon them.

He went firſt into St. Paul's church, where, not meaning that the people ſhould forget too ſoon that he came in by battle, he made offertory of his ſtandards, and had orizons and *Te Deum* again ſung; and went to his lodging prepared in the biſhop of London's palace, where he ſtayed for a time.

During his abode there, he aſſembled his council, and other principal perſons, in preſence of whom he did renew again his promiſe to marry with the lady Elizabeth. This he did the rather, becauſe having at his coming out of Britain given artificially, for ſerving of his own turn, ſome hopes, in caſe he obtained the kingdom, to marry Anne, inheritreſs to the dutchy of Britain, whom Charles the eighth of France ſoon after married, it bred ſome doubt and ſuſpicion amongſt divers that he was not ſincere, or at leaſt not fixed in going on with the match of England ſo much deſired: which conceit alſo, though it were but talk and diſcourſe, did much afflict the poor lady Elizabeth herſelf. But howſoever he both truly intended it, and deſired alſo it ſhould be ſo believed (the better to extinguiſh envy and contradiction to his other purpoſes)

yet was he reſolved in himſelf not to proceed to the conſummation thereof, till his coronation and a parliament were paſt. The one, leſt a joint coronation of himſelf and his Queen might give any countenance of participation of title; the other, leſt in the entailing of the crown to himſelf, which he hoped to obtain by parliament, the votes of the parliament might any ways reflect upon her.

About this time in autumn, towards the end of September, there began and reigned in the city, and other parts of the kingdom, a diſeaſe then new: which of the accidents and manner thereof they called the ſweating ſickneſs. This diſeaſe had a ſwift courſe, both in the ſick body, and in the time and period of the laſting thereof; for they that were taken with it, upon four and twenty hours eſcaping, were thought almoſt aſſured. And as to the time of the malice and reign of the diſeaſe ere it ceaſed; it began about the one and twentieth of September, and cleared up before the end of October, inſomuch as it was no hinderance to the King's coronation, which was the laſt of October; nor (which was more) to the holding of the parliament, which began but ſeven days after. It was a peſtilent fever, but (as it ſeemeth) not ſeated in the veins or humours, for that there followed no carbuncle, no purple or livid ſpots, or the like, the maſs of the body being not tainted; only a malign vapour flew to the heart, and ſeized the vital ſpirits; which ſtirred nature to ſtrive to ſend it forth by an extreme ſweat. And it appeared by experience, that this diſeaſe was rather a ſurprize of nature, than obſtinate to remedies, if it were in time looked unto. For if the patient were kept in an equal temper, both for clothes, fire, and drink, moderately warm, with temperate cordials, whereby nature's work were neither irritated by heat, nor turned back by cold, he commonly recovered. But infinite perſons died ſuddenly of it, before the manner of the cure and attendance was known. It was conceived not to be an epidemick diſeaſe, but to proceed from a malignity in the conſtitution of the air, gathered by the prediſpoſitions of ſeaſons; and the ſpeedy ceſſation declared as much.

On Simon and Jude's eve, the King dined with Thomas Bourchier, archbiſhop of Canterbury and cardinal; and from Lambeth went by land over the bridge to the Tower, where the morrow after he made twelve knights bannerets. But for creations he diſpenſed them with a ſparing hand. For notwithſtanding a field ſo lately fought, and a coronation ſo near at hand, he only created three: Jaſper, earl of Pembroke (the King's uncle) was created duke of Bedford; Thomas, the lord Stanley (the King's father-in-law) earl of Derby; and Edward Courtney, earl of Devon; though the King had then nevertheleſs a purpoſe in himſelf to make more in time of parliament; bearing a wiſe and decent reſpect to diſtribute his creations, ſome to honour his coronation, and ſome his parliament.

The coronation followed two days after, upon the thirtieth day of October, in the year of our Lord 1485; at which time Innocent the eighth was Pope of Rome; Frederick the third Emperor of Almain; and Maximilian his ſon newly choſen King of the Romans; Charles the eighth King of France; Ferdinando and Iſabella Kings of Spain; and James the third, King of Scotland: with all which Kings and States the King was at that time in good peace and amity. At which day alſo (as if the crown upon his head had put perils into his thoughts) he did inſtitute, for the better ſecurity of his perſon, a band of fifty archers, under a captain, to attend him, by the name of yeomen of his guard: and yet, that it might be thought to be rather a matter of dignity, after the imitation of that he had known abroad, than any matter of diffidence appropriate to his own caſe, he made it to be underſtood for an ordinance not temporary, but to hold in ſucceſſion for ever after.

The ſeventh of November the King held his parliament at Weſtminſter, which he had ſummoned immediately after his coming to London. His ends in calling a parliament (and that ſo ſpeedily) were chiefly three; firſt to procure the crown to be entailed upon himſelf. Next, to have the attainders of all of his party (which were in no ſmall number) reverſed, and all acts of hoſtility by them done in his quarrel, remitted and diſcharged; and on the other ſide, to attaint by parliament the heads and principals of his enemies. The third, to calm and quiet the fears of the reſt of that party by a general pardon; not

being ignorant in how great danger a King ſtands from his ſubjects, when moſt of his ſubjects are conſcious in themſelves, that they ſtand in his danger. Unto theſe three ſpecial motives of a parliament was added, that he, as a prudent and moderate Prince, made this judgment, that it was fit for him to haſten to let his people ſee, that he meant to govern by law, howſoever he came in by the ſword; and fit alſo to reclaim them to know him for their King, whom they had ſo lately talked of as an enemy, or baniſhed man. For that which concerned the entailing of the crown (more than that he was true to his own will, that he would not endure any mention of the lady Elizabeth, no not in the nature of ſpecial entail) he carried it otherwiſe with great wiſdom and meaſure. For he did not preſs to have the act penned by way of declaration or recognition of right; as, on the other ſide, he avoided to have it by new law or ordinance, but choſe rather a kind of middle way, by way of eſtabliſhment, and that under covert and indifferent words; "that the inherit-"ance of the crown ſhould reſt, remain, and abide in the King," *etc.* which words might equally be applied, that the crown ſhould continue to him; but whether as having former right to it (which was doubtful) or having it then in fact and poſſeſſion (which no man denied) was left fair to interpretation either way. And again, for the limitation of the entail, he did not preſs it to go farther than to himſelf and to the heirs of his body, not ſpeaking of his right heirs; but leaving that to the law to decide: ſo as the entail might ſeem rather a perſonal favour to him and his children, than a total diſinheriſon to the houſe of York. And in this form was the law drawn and paſſed. Which ſtatute he procured to be confirmed by the Pope's bull the year following, with mention nevertheleſs (by way of recital) of his other titles, both of deſcent and conqueſt. So as now the wreath of three, was made a wreath of five; for to the three firſt titles of the two houſes, or lines, and conqueſt, were added two more, the authorities parliamentary and papal.

The King likewiſe, in the reverſal of the attainders of his partakers, and diſcharging them of all offences incident to his ſervice and ſuccour, had his will; and acts did paſs accordingly. In the paſſage whereof, exception was taken to divers perſons in the houſe of commons, for that they were attainted, and thereby not legal, nor habilitate to ſerve in parliament, being diſabled in the higheſt degree; and that it ſhould be a great incongruity to have them to make laws, who themſelves were not inlawed. The truth was, that divers of thoſe, which had in the time of King Richard been ſtrongeſt, and moſt declared for the King's party, were returned knights and burgeſſes for the parliament; whether by care or recommendation from the ſtate, or the voluntary inclination of the people: many of which had been by Richard the third attainted by outlawries, or otherwiſe. The King was ſomewhat troubled with this: for though it had a grave and ſpecious ſhew, yet it reflected upon his party. But wiſely not ſhewing himſelf at all moved therewith, he would not underſtand it but as a caſe in law, and wiſhed the judges to be adviſed thereupon; who for that purpoſe were forthwith aſſembled in the exchequer-chamber (which is the council-chamber of the judges) and upon deliberation they gave a grave and ſafe opinion and advice, mixed with law and convenience; which was, that the knights and burgeſſes attainted by the courſe of law ſhould forbear to come into the houſe, till a law were paſſed for the reverſal of their attainders.

It was at that time incidently moved amongſt the judges in their conſultation, what ſhould be done for the King himſelf, who likewiſe was attainted? But it was with unanimous conſent reſolved, "That the crown takes away all "defects and ſtops in blood: and that from the time the King did aſſume the "crown, the fountain was cleared, and all attainders and corruption of blood "diſcharged." But nevertheleſs, for honour's ſake, it was ordained by parliament, that all records, wherein there was any memory, or mention of the King's attainder, ſhould be defaced, cancelled, and taken off the file.

But on the part of the King's enemies there were by parliament attainted, the late duke of Glouceſter, calling himſelf Richard the third; the duke of Norfolk,

Norfolk, the earl of Surrey, viſcount Lovel, the lord Ferrers, the lord Zouch, Richard Ratcliffe, William Cateſby, and many others of degree and quality. In which bills of attainders, nevertheleſs, there were contained many juſt and temperate clauſes, ſavings, and proviſoes, well ſhewing and fore-tokening the wiſdom, ſtay, and moderation of the King's ſpirit of government. And for the pardon of the reſt, that had ſtood againſt the King, the King, upon a ſecond advice, thought it not fit it ſhould paſs by parliament, the better (being matter of grace) to impropriate the thanks to himſelf: uſing only the opportunity of a parliament time, the better to diſperſe it into the veins of the kingdom. Therefore during the parliament he publiſhed his royal proclamation, offering pardon and grace of reſtitution to all ſuch, as had taken arms, or been participant of any attempts againſt him; ſo as they ſubmitted themſelves to his mercy by a day, and took the oath of allegiance and fidelity to him. Whereupon many came out of ſanctuary, and many more came out of fear, no leſs guilty than thoſe that had taken ſanctuary.

As for money or treaſure, the King thought it not ſeaſonable, or fit to demand any of his ſubjects at this parliament; both becauſe he had received ſatisfaction from them in matters of ſo great importance, and becauſe he could not remunerate them with any general pardon, being prevented therein by the coronation pardon, paſſed immediately before: but chiefly, for that it was in every man's eye, what great forfeitures and confiſcations he had at that preſent to help himſelf; whereby thoſe caſualties of the crown might in reaſon ſpare the purſes of the ſubject; eſpecially in a time when he was in peace with all his neighbours. Some few laws paſſed at that parliament, almoſt for form ſake: amongſt which there was one, to reduce aliens, being made denizens, to pay ſtrangers cuſtoms; and another, to draw to himſelf the ſeizures and compoſitions of Italians goods, for not employment, being points of profit to his coffers, whereof from the very beginning he was not forgetful; and had been more happy at the latter end, if his early providence (which kept him from all neceſſity of exacting upon his people) could likewiſe have attempered his nature therein. He added, during parliament, to his former creations, the innoblement or advancement in nobility of a few others; the lord Chandos of Britain, was made earl of Bath; Sir Giles Daubeney, was made lord Daubeney; and Sir Robert Willoughby, lord Brook.

The King did alſo with great nobleneſs and bounty (which virtues at that time had their turns in his nature) reſtore Edward Stafford (eldeſt ſon to Henry, duke of Buckingham, attainted in the time of King Richard) not only to his dignities, but to his fortunes and poſſeſſions, which were great: to which he was moved alſo by a kind of gratitude, for that the duke was the man that moved the firſt ſtone againſt the tyranny of King Richard, and indeed made the King a bridge to the crown upon his own ruins. Thus the parliament broke up.

The parliament being diſſolved, the King ſent forthwith money to redeem the marquis Dorſet, and Sir John Bourchier, whom he had left as his pledges at Paris, for money which he had borrowed, when he made his expedition for England. And thereupon he took a fit occaſion to ſend the lord Treaſurer and maſter Bray (whom he uſed as counſellor) to the lord mayor of London, requiring of the city a preſt of ſix thouſand marks: but after many parleys, he could obtain but two thouſand pounds; which nevertheleſs the King took in good part, as men uſe to do, that practiſe to borrow money when they have no need. About this time, the King called unto his privy-council John Morton and Richard Fox, the one biſhop of Ely, the other biſhop of Exeter; vigilant men, and ſecret, and ſuch as kept watch with him almoſt upon all men elſe. They had been both verſed in his affairs, before he came to the crown, and were partakers of his adverſe fortune. This Morton ſoon after, upon the death of Bourchier, he made archbiſhop of Canterbury. And for Fox, he made him lord Keeper of his privy-ſeal, and afterwards advanced him by degrees, from Exeter to Bath and Wells, thence to Durham, and laſt, to Wincheſter. For although the King loved to employ and advance biſhops, becauſe having rich biſhopricks, they carried their reward upon themſelves; yet he did uſe

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to raiſe them by ſteps, that he might not loſe the profit of the firſt fruits, which by that courſe of gradation was multiplied.

At laſt, upon the eighteenth of January, was ſolemnized the ſo long expected and ſo much deſired marriage, between the King and the lady Elizabeth: which day of marriage was celebrated with greater triumph and demonſtrations (eſpecially on the people's part) of joy and gladneſs, than the days either of his entry or coronation; which the King rather noted, than liked. And it is true, that all his life time, while the lady Elizabeth lived with him (for ſhe died before him) he ſhewed himſelf no very indulgent huſband towards her, though ſhe was beautiful, gentle, and fruitful. But his averſion towards the houſe of York was ſo predominant in him, as it found place, not only in his wars and councils, but in his chamber and bed.

Towards the middle of the ſpring, the King, full of confidence and aſſurance, as a Prince that had been victorious in battle, and had prevailed with his parliament in all that he deſired, and had the ring of acclamations freſh in his ears, thought the reſt of his reign ſhould be but play, and the enjoying of a kingdom: yet, as a wiſe and watchful King, he would not neglect any thing for his ſafety; thinking nevertheleſs to perform all things now, rather as an exerciſe, than as a labour. So he being truly informed, that the northern parts were not only affectionate to the houſe of York, but particularly had been devoted to King Richard the third; thought it would be a ſummer well ſpent to viſit thoſe parts, and by his preſence and application of himſelf to reclaim and rectify thoſe humours. But the King, in his account of peace and calms, did much over-caſt his fortunes, which proved for many years together full of broken ſeas, tides, and tempeſts. For he was no ſooner come to Lincoln, where he kept his Eaſter, but he received news, that the lord Lovel, Humphrey Stafford, and Thomas Stafford (who had formerly taken ſanctuary at Colcheſter) were departed out of ſanctuary, but to what place, no man could tell: which advertiſement the King deſpiſed, and continued his journey to York. At York there came freſh and more certain advertiſement, that the lord Lovel was at hand with a great power of men, and that the Staffords were in arms in Worceſterſhire, and had made their approaches to the city of Worceſter, to aſſail it. The King, as a Prince of great and profound judgment, was not much moved with it; for that he thought it was but a rag or remnant of Boſworth-field, and had nothing in it of the main party of the houſe of York. But he was more doubtful of the raiſing of forces to reſiſt the rebels, than of the reſiſtance itſelf; for that he was in a core of people, whoſe affections he ſuſpected. But the action enduring no delay, he did ſpeedily levy and ſend againſt the lord Lovel, to the number of three thouſand men, ill armed, but well aſſured (being taken ſome few out of his own train, and the reſt out of the tenants and followers of ſuch as were ſafe to be truſted) under the conduct of the duke of Bedford. And as his manner was to ſend his pardons rather before the ſword than after, he gave commiſſion to the duke to proclaim pardon to all that would come in: which the duke, upon his approach to the lord Lovel's camp, did perform. And it fell out as the King expected; the heralds were the great ordnance. For the lord Lovel, upon proclamation of pardon, miſtruſting his men, fled into Lancaſhire, and lurking for a time with Sir Thomas Broughton, after ſailed over into Flanders to the lady Margaret. And his men, forſaken of their captain, did preſently ſubmit themſelves to the duke. The Staffords likewiſe, and their forces, hearing what had happened to the lord Lovel (in whoſe ſucceſs their chief truſt was) deſpaired, and diſperſed. The two brothers taking ſanctuary at Colnham, a village near Abingdon; which place, upon view of their privilege in the King's bench, being judged no ſufficient ſanctuary for traitors, Humphrey was executed at Tyburn; and Thomas, as being led by his elder brother, was pardoned. So this rebellion proved but a blaſt, and the King having by this journey purged a little the dregs and leaven of the northern people, that were before in no good affection towards him, returned to London.

In September following, the Queen was delivered of her firſt ſon, whom the King (in honour of the Britiſh race, of which himſelf was) named Arthur, according to the name of that ancient worthy King of the Britains, in whoſe acts there is truth enough to make him famous, beſides that which is fabulous. The child was ſtrong and able, though he was born in the eighth month, which the phyſicians do prejudge.

THERE followed this year, being the ſecond of the King's reign, a ſtrange accident of ſtate, whereof the relations which we have are ſo naked, as they leave it ſcarce credible; not for the nature of it (for it hath fallen out often) but for the manner and circumſtance of it, eſpecially in the beginnings. Therefore we ſhall make our judgment upon the things themſelves, as they give light one to another, and (as we can) dig truth out of the mine. The King was green in his eſtate; and, contrary to his own opinion and deſert both, was not without much hatred throughout the realm. The root of all was the diſcountenancing of the houſe of York, which the general body of the realm ſtill affected. This did alienate the hearts of the ſubjects from him daily more and more, eſpecially when they ſaw, that after his marriage, and after a ſon born, the King did nevertheleſs not ſo much as proceed to the coronation of the Queen, not vouchſafing her the honour of a matrimonial crown; for the coronation of her was not till almoſt two years after, when danger had taught him what to do. But much more when it was ſpread abroad (whether by error, or the cunning of malecontents) that the King had a purpoſe to put to death Edward Plantagenet cloſely in the Tower: whoſe caſe was ſo nearly parallelled with that of Edward the fourth's children, in reſpect of the blood, like age, and the very place of the Tower, as it did refreſh and reflect upon the King a moſt odious reſemblance, as if he would be another King Richard. And all this time it was ſtill whiſpered every where, that at leaſt one of the children of Edward the fourth was living: which bruit was cunningly fomented by ſuch as deſired innovation. Neither was the King's nature and cuſtoms greatly fit to diſperſe theſe miſts; but contrariwiſe, he had a faſhion rather to create doubts than aſſurance. Thus was fuel prepared for the ſpark: the ſpark, that afterwards kindled ſuch a fire and combuſtion, was at the firſt contemptible.

There was a ſubtile prieſt called Richard Simon*, that lived in Oxford, and had to his pupil a baker's ſon, named Lambert Simnell, of the age of ſome fifteen years, a comely youth, and well favoured, not without ſome extraordinary dignity, and grace of aſpect. It came into this prieſt's fancy (hearing what men talked, and in hope to raiſe himſelf to ſome great biſhoprick) to cauſe this lad to counterfeit and perſonate the ſecond ſon of Edward the fourth, ſuppoſed to be murdered; and afterward (for he changed his intention in the manage) the lord Edward Plantagenet, then priſoner in the Tower, and accordingly to frame him and inſtruct him in the part he was to play. This is that which (as was touched before) ſeemeth ſcarcely credible; not that a falſe perſon ſhould be aſſumed to gain a kingdom, for it hath been ſeen in ancient and late times; nor that it ſhould come into the mind of ſuch an abject fellow, to enterprize ſo great a matter; for high conceits do ſometimes come ſtreaming into the imaginations of baſe perſons; eſpecially when they are drunk with news, and talk of the people. But here is that which hath no appearance: That this prieſt, being utterly unacquainted with the true perſon, according to whoſe pattern he ſhould ſhape his counterfeit, ſhould think it poſſible for him to inſtruct his player, either in geſture and faſhions, or in recounting paſt matters of his life and education; or in fit anſwers to queſtions, or the like, any ways to come near the reſemblance of him whom he was to repreſent. For this lad was not to perſonate one, that had been long before taken out of his cradle, or conveyed away in his infancy, known to few; but a youth, that till the age almoſt of ten years had been brought up in a court where infinite eyes had been upon him.

* The prieſt's name was William Simonds, and the youth was the ſon of . . . . . an organ-maker in Oxford, as the prieſt declared before the whole convocation of the clergy at Lambeth, Feb. 17. 1486. *Vide Reg. Morton. f.* 34. *MS. Sandcroft.*

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For King Edward, touched with remorſe of his brother the duke of Clarence's death, would not indeed reſtore his ſon (of whom we ſpeak) to be duke of Clarence, but yet created him earl of Warwick, reviving his honour on the mother's ſide; and uſed him honourably during his time, though Richard the third afterwards confined him. So that it cannot be, but that ſome great perſon that knew particularly and familiarly Edward Plantagenet, had a hand in the buſineſs, from whom the prieſt might take his aim. That which is moſt probable, out of the precedent and ſubſequent acts, is, that it was the Queen dowager, from whom this action had the principal ſource and motion. For certain it is, ſhe was a buſy negociating woman, and in her withdrawing-chamber had the fortunate conſpiracy for the King againſt King Richard the third been hatched; which the King knew, and remembered perhaps but too well; and was at this time extremely diſcontent with the King, thinking her daughter (as the King handled the matter) not advanced, but depreſſed: and none could hold the book ſo well to prompt and inſtruct this ſtage-play, as ſhe could. Nevertheleſs it was not her meaning, nor no more was it the meaning of any of the better and ſager ſort that favoured this enterprize, and knew the ſecret, that this diſguiſed idol ſhould poſſeſs the crown; but at his peril to make way to the overthrow of the King; and that done, they had their ſeveral hopes and ways. That which doth chiefly fortify this conjecture is, that as ſoon as the matter brake forth in any ſtrength, it was one of the King's firſt acts to cloiſter the Queen dowager in the nunnery of Bermondſey, and to take away all her lands and eſtate; and this by a cloſe council, without any legal proceeding, upon far fetched pretences that ſhe had delivered her two daughters out of ſanctuary to King Richard, contrary to promiſe. Which proceeding being even at that time taxed for rigorous and undue, both in matter and manner, makes it very probable there was ſome greater matter againſt her, which the King upon reaſon of policy, and to avoid envy, would not publiſh. It is likewiſe no ſmall argument that there was ſome ſecret in it, and ſome ſuppreſſing of examinations, for that the prieſt Simon himſelf, after he was taken, was never brought to execution; no not ſo much as to publick trial (as many clergymen were upon leſs treaſons) but was only ſhut up cloſe in a dungeon. Add to this, that after the earl of Lincoln (a principal perſon of the houſe of York) was ſlain in Stoke-field, the King opened himſelf to ſome of his council, that he was ſorry for the earl's death, becauſe by him (he ſaid) he might have known the bottom of his danger.

But to return to the narration itſelf: Simon did firſt inſtruct his ſcholar for the part of Richard, duke of York, ſecond ſon to King Edward the fourth; and this was at ſuch time as it was voiced, that the King purpoſed to put to death Edward Plantagenet, priſoner in the Tower, whereat there was great murmur. But hearing ſoon after a general bruit, that Plantagenet had eſcaped out of the Tower, and thereby finding him ſo much beloved amongſt the people, and ſuch rejoicing at his eſcape, the cunning prieſt changed his copy, and choſe now Plantagenet to be the ſubject his pupil ſhould perſonate, becauſe he was more in the preſent ſpeech and votes of the people; and it pieced better, and followed more cloſe and handſomely, upon the bruit of Plantagenet's eſcape. But yet doubting that there would be too near looking, and too much perſpective into his diſguiſe, if he ſhould ſhew it here in England; he thought good (after the manner of ſcenes in ſtage-plays and maſks) to ſhew it afar off; and therefore ſailed with his ſcholar into Ireland, where the affection to the houſe of York was moſt in height. The King had been a little improvident in the matters of Ireland, and had not removed officers and counſellors, and put in their places, or at leaſt intermingled, perſons of whom he ſtood aſſured, as he ſhould have done, ſince he knew the ſtrong bent of that country towards the houſe of York, and that it was a tickliſh and unſettled ſtate, more eaſy to receive diſtempers and mutations, than England was. But truſting to the reputation of his victories and ſucceſſes in England, he thought he ſhould have time enough to extend his cares afterwards to that ſecond kingdom.

Wherefore through this neglect, upon the coming of Simon with his pre-

tended Plantagenet into Ireland, all things were prepared for revolt and ſedition, almoſt as if they had been ſet and plotted beforehand. Simon's firſt addreſs was to the lord Thomas Fitz-Gerard, earl of Kildare, and deputy of Ireland; before whoſe eyes he did caſt ſuch a miſt (by his own inſinuation, and by the carriage of his youth, that expreſſed a natural princely behaviour) as, joined perhaps with ſome inward vapours of ambition and affection in the earl's own mind, left him fully poſſeſſed, that it was the true Plantagenet. The earl preſently communicated the matter with ſome of the nobles, and others there, at the firſt ſecretly; but finding them of like affection to himſelf, he ſuffered it of purpoſe to vent and paſs abroad; becauſe they thought it not ſafe to reſolve, till they had a taſte of the people's inclination. But if the great ones were in forwardneſs, the people were in fury, entertaining this airy body or phantaſm with incredible affection; partly, out of their great devotion to the houſe of York; partly out of a proud humour in the nation, to give a King to the realm of England. Neither did the party, in this heat of affection, much trouble themſelves with the attainder of George duke of Clarence; having newly learned by the King's example, that attainders do not interrupt the conveying of title to the crown. And as for the daughters of King Edward the fourth, they thought King Richard had ſaid enough for them; and took them to be but as of the King's party, becauſe they were in his power, and at his diſpoſing. So that with marvellous conſent and applauſe, this counterfeit Plantagenet was brought with great ſolemnity to the caſtle of Dublin, and there ſaluted, ſerved, and honoured as King; the boy becoming it well, and doing nothing that did bewray the baſeneſs of his condition. And within a few days after he was proclaimed King in Dublin, by the name of King Edward the ſixth; there being not a ſword drawn in King Henry his quarrel.

The King was much moved with this unexpected accident when it came to his ears, both becauſe it ſtruck upon that ſtring which ever he moſt feared, as alſo becauſe it was ſtirred in ſuch a place, where he could not with ſafety transfer his own perſon to ſuppreſs it. For partly through natural valour, and partly through an univerſal ſuſpicion (not knowing whom to truſt) he was ever ready to wait upon all his atchievements in perſon. The King therefore firſt called his council together at the charter-houſe at Shine; which council was held with great ſecrecy, but the open decrees thereof, which preſently came abroad, were three.

The firſt was, that the Queen dowager, for that ſhe, contrary to her pact and agreement with thoſe that had concluded with her concerning the marriage of her daughter Elizabeth with King Henry, had nevertheleſs delivered her daughters out of ſanctuary into King Richard's hands, ſhould be cloiſtered in the nunnery of Bermondſey, and forfeit all her lands and goods.

The next was, that Edward Plantagenet, then cloſe priſoner in the Tower, ſhould be, in the moſt publick and notorious manner that could be deviſed, ſhewed unto the people: in part to diſcharge the King of the envy of that opinion and bruit, how he had been put to death privily in the Tower; but chiefly to make the people ſee the levity and impoſture of the proceedings of Ireland, and that their Plantagenet was indeed but a puppit or a counterfeit.

The third was, that there ſhould be again proclaimed a general pardon to all that would reveal their offences, and ſubmit themſelves by a day. And that this pardon ſhould be conceived in ſo ample and liberal a manner, as no high-treaſon (no not againſt the King's own perſon) ſhould be excepted. Which though it might ſeem ſtrange, yet was it not ſo to a wiſe King, that knew his greateſt dangers were not from the leaſt treaſons, but from the greateſt. Theſe reſolutions of the King and his council were immediately put in execution. And firſt, the Queen dowager was put into the monaſtery of Bermondſey, and all her eſtates ſeized into the King's hands: whereat there was much wondering; that a weak woman, for the yielding to the menaces and promiſes of a tyrant, after ſuch a diſtance of time (wherein the King had ſhewed no diſpleaſure nor alteration) but much more after ſo happy a marriage between the King and her daughter, bleſſed with iſſue male, ſhould, upon a ſudden mutability or diſcloſure of the King's mind, be ſo ſeverely handled.

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This lady was amongſt the examples of great variety of fortune. She had firſt from a diſtreſſed ſuitor, and deſolate widow, been taken to the marriage-bed of a batchelor King, the goodlieſt perſonage of his time; and even in his reign ſhe had endured a ſtrange eclipſe by the King's flight, and temporary depriving from the crown. She was alſo very happy, in that ſhe had by him fair iſſue; and continued his nuptial love (helping herſelf by ſome obſequious bearing and diſſembling of his pleaſures) to the very end. She was much affectionate to her own kindred, even unto faction; which did ſtir great envy in the lords of the King's ſide, who counted her blood a diſparagement to be mingled with the King's. With which lords of the King's blood joined alſo the King's favourite, the lord Haſtings; who, notwithſtanding the King's great affection to him, was thought at times, through her malice and ſpleen, not to be out of danger of falling. After her huſband's death ſhe was matter of tragedy, having lived to ſee her brother beheaded, and her two ſons depoſed from the crown, baſtarded in their blood, and cruelly murdered. All this while nevertheleſs ſhe enjoyed her liberty, ſtate, and fortunes: but afterwards again, upon the riſe of the wheel, when ſhe had a King to her ſon-in-law, and was made grandmother to a grandchild of the beſt ſex; yet was ſhe (upon dark and unknown reaſons, and no leſs ſtrange pretences) precipitated and baniſhed the world into a nunnery; where it was almoſt thought dangerous to viſit her, or ſee her; and where not long after ſhe ended her life: but was by the King's commandment buried with the King her huſband at Windſor. She was foundreſs of Queen's college in Cambridge. For this act the King ſuſtained great obloquy, which nevertheleſs (beſides the reaſon of ſtate) was ſomewhat ſweetened to him by a great confiſcation.

About this time alſo, Edward Plantagenet was upon a Sunday brought throughout all the principal ſtreets of London, to be ſeen of the people. And having paſſed the view of the ſtreets, was conducted to Paul's church in ſolemn proceſſion, where great ſtore of people were aſſembled. And it was provided alſo in good faſhion, that divers of the nobility, and others of quality (eſpecially of thoſe that the King moſt ſuſpected, and knew the perſon of Plantagenet beſt) had communication with the young gentleman by the way, and entertained him with ſpeech and diſcourſe; which did in effect mar the pageant in Ireland with the ſubjects here, at leaſt with ſo many, as out of error, and not out of malice, might be miſled. Nevertheleſs, in Ireland (where it was too late to go back) it wrought little or no effect. But contrariwiſe, they turned the impoſture upon the King; and gave out, that the King, to defeat the true inheritor, and to mock the world, and blind the eyes of ſimple men, had tricked up a boy in the likeneſs of Edward Plantagenet, and ſhewed him to the people; not ſparing to profane the ceremony of a proceſſion, the more to countenance the fable.

The general pardon likewiſe near the ſame time came forth; and the King therewithal omitted no diligence, in giving ſtrait order for the keeping of the ports, that fugitives, malecontents, or ſuſpected perſons, might not paſs over into Ireland and Flanders.

Mean while the rebels in Ireland had ſent privy meſſengers both into England, and into Flanders, who in both places had wrought effects of no ſmall importance. For in England they won to their party John earl of Lincoln, ſon of John de la Pole duke of Suffolk, and of Elizabeth, King Edward the fourth's eldeſt ſiſter. This earl was a man of great wit and courage, and had his thoughts highly raiſed by hopes and expectations for a time: for Richard the third had a reſolution, out of his hatred to both his brethren, King Edward, and the duke of Clarence, and their lines (having had his hand in both their bloods) to diſable their iſſues upon falſe and incompetent pretexts; the one of attainder, the other of illegitimation: and to deſign this gentleman (in caſe himſelf ſhould die without children) for inheritor of the crown. Neither was this unknown to the King, who had ſecretly an eye upon him. But the King, having taſted of the envy of the people for his impriſonment of Edward Plantagenet, was doubtful to heap up any more diſtaſtes of that kind, by the impriſonment of de la Pole alſo; the rather thinking it policy to conſerve him as a corrival unto

the other. The earl of Lincoln was induced to participate with the action of Ireland, not lightly upon the ſtrength of the proceedings there, which was but a bubble, but upon letters from the lady Margaret of Burgundy, in whoſe ſuccours and declaration for the enterprize there ſeemed to be a more ſolid foundation, both for reputation and forces. Neither did the earl refrain the buſineſs for that he knew the pretended Plantagenet to be but an idol. But contrariwiſe, he was more glad it ſhould be the falſe Plantagenet, than the true; becauſe the falſe being ſure to fall away of himſelf, and the true to be made ſure of by the King, it might open and pave a fair and prepared way to his own title. With this reſolution he ſailed ſecretly into Flanders, where was a little before arrived the lord Lovel, leaving a correſpondence here in England with Sir Thomas Broughton, a man of great power and dependencies in Lancaſhire. For before this time, when the pretended Plantagenet was firſt received in Ireland, ſecret meſſengers had been alſo ſent to the lady Margaret, advertiſing her what was paſſed in Ireland, imploring ſuccours in an enterprize (as they ſaid) ſo pious and juſt, and that God had ſo miraculouſly proſpered the beginning thereof; and making offer, that all things ſhould be guided by her will and direction, as the ſovereign patroneſs and protectreſs of the enterprize. Margaret was ſecond ſiſter to King Edward the fourth, and had been ſecond wife to Charles, ſurnamed the Hardy, duke of Burgundy; by whom having no children of her own, ſhe did with ſingular care and tenderneſs intend the education of Philip and Margaret, grandchildren to her former huſband; which won her great love and authority among the Dutch. This Princeſs (having the ſpirit of a man, and malice of a woman) abounding in treaſure by the greatneſs of her dower and her provident government, and being childleſs, and without any nearer care, made it her deſign and enterprize, to ſee the majeſty royal of England once again replaced in her houſe; and had ſet up King Henry as a mark, at whoſe overthrow all her actions ſhould aim and ſhoot; inſomuch as all the counſels of his ſucceeding troubles came chiefly out of that quiver. And ſhe bare ſuch a mortal hatred to the houſe of Lancaſter, and perſonally to the King, as ſhe was no ways mollified by the conjunction of the houſes in her niece's marriage, but rather hated her niece, as the means of the King's aſcent to the crown, and aſſurance therein. Wherefore with great violence of affection ſhe embraced this overture. And upon counſel taken with the earl of Lincoln, and the lord Lovel, and ſome other of the party, it was reſolved, with all ſpeed the two lords, aſſiſted with a regiment of two thouſand Almains, being choice and veteran bands, under the command of Martin Swart (a valiant and experimented captain), ſhould paſs over into Ireland to the new King; hoping, that when the action ſhould have the face of a received and ſettled regality (with ſuch a ſecond perſon as the earl of Lincoln, and the conjunction and reputation of foreign ſuccours) the fame of it would embolden and prepare all the party of the confederates and malecontents within the realm of England to give them aſſiſtance when they ſhould come over there. And for the perſon of the counterfeit, it was agreed, that if all things ſucceeded well, he ſhould be put down, and the true Plantagenet received; wherein nevertheleſs the earl of Lincoln had his particular hopes. After they were come into Ireland, and that the party took courage, by ſeeing themſelves together in a body, they grew very confident of ſucceſs; conceiving and diſcourſing amongſt themſelves, that they went in upon far better cards to overthrow King Henry, than King Henry had to overthrow King Richard: and that if there were not a ſword drawn againſt them in Ireland, it was a ſign the ſwords in England would be ſoon ſheathed, or beaten down. And firſt, for a bravery upon this acceſſion of power, they crowned their new King in the cathedral church of Dublin; who formerly had been but proclaimed only; and then ſate in council what ſhould farther be done. At which council, though it were propounded by ſome, that it were the beſt way to eſtabliſh themſelves firſt in Ireland, and to make that the ſeat of the war, and to draw King Henry thither in perſon, by whoſe abſence they thought there would be great alterations and commotions in England; yet becauſe the kingdom there was poor, and they ſhould not be able to keep their army toge-

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ther, nor pay their German ſoldiers, and for that alſo the ſway of the Iriſhmen, and generally of the men of war, which (as in ſuch caſes of popular tumults is uſual) did in effect govern their leaders, was eager, and in affection to make their fortunes upon England; it was concluded with all poſſible ſpeed to tranſport their forces into England. The King in the mean time, who at the firſt when he heard what was done in Ireland, though it troubled him, yet thought he ſhould be well enough able to ſcatter the Iriſh as a flight of birds, and rattle away this ſwarm of bees with their King; when he heard afterwards that the earl of Lincoln was embarked in the action, and that the lady Margaret was declared for it; he apprehended the danger in a true degree as it was, and ſaw plainly that his kingdom muſt again be put to the ſtake, and that he muſt fight for it. And firſt he did conceive, before he underſtood of the earl of Lincoln's failing into Ireland out of Flanders, that he ſhould be aſſailed both upon the eaſt parts of the kingdom of England, by ſome impreſſion from Flanders, and upon the north-weſt out of Ireland. And therefore having ordered muſters to be made in both parts, and having proviſionally deſigned two generals, Jaſper earl of Bedford, and John earl of Oxford (meaning himſelf alſo to go in perſon where the affairs ſhould moſt require it) and nevertheleſs not expecting any actual invaſion at that time (the winter being far on) he took his journey himſelf towards Suffolk and Norfolk, for the confirming of thoſe parts. And being come to St. Edmond's-Bury, he underſtood that Thomas marquis Dorſet (who had been one of the pledges in France) was haſting towards him, to purge himſelf of ſome accuſations which had been made againſt him. But the King, though he kept an ear for him, yet was the time ſo doubtful, that he ſent the earl of Oxford to meet him, and forthwith to carry him to the Tower; with a fair meſſage nevertheleſs, that he ſhould bear that diſgrace with patience, for that the King meant not his hurt, but only to preſerve him from doing hurt, either to the King's ſervice, or to himſelf; and that the King ſhould always be able (when he had cleared himſelf) to make him reparation.

From St. Edmond's-Bury he went to Norwich, where he kept his Chriſtmas. And from thence he went (in a manner of pilgrimage) to Walſingham, where he viſited our lady's church, famous for miracles, and made his prayers and vows for help and deliverance. And from thence he returned by Cambridge to London. Not long after the rebels, with their King (under the leading of the earl of Lincoln, the earl of Kildare, the lord Lovel, and colonel Swart) landed at Fouldrey in Lancaſhire; whither there repaired to them Sir Thomas Broughton, with ſome ſmall company of Engliſh. The King by that time (knowing now the ſtorm would not divide, but fall in one place) had levied forces in good number; and in perſon (taking with him his two deſigned generals, the duke of Bedford, and the earl of Oxford) was come on his way towards them as far as Coventry, whence he ſent forth a troop of light horſemen for diſcovery, and to intercept ſome ſtragglers of the enemies, by whom he might the better underſtand the particulars of their progreſs and purpoſes, which was accordingly done; though the King otherwiſe was not without intelligence from eſpials in the camp.

The rebels took their way toward York, without ſpoiling the country, or any act of hoſtility, the better to put themſelves into favour of the people, and to perſonate their King: who (no doubt, out of a princely feeling) was ſparing, and compaſſionate towards his ſubjects: but their ſnow-ball did not gather as it went. For the people came not in to them; neither did any riſe or declare themſelves in other parts of the kingdom for them; which was cauſed partly by the good taſte that the King had given his people of his government, joined with the reputation of his felicity; and partly for that it was an odious thing to the people of England, to have a King brought in to them upon the ſhoulders of Iriſh and Dutch, of which their army was in ſubſtance compounded. Neither was it a thing done with any great judgment on the party of the rebels, for them to take their way towards York: conſidering that howſoever thoſe parts had formerly been a nurſery of their friends; yet it was there, where the lord Lovel had ſo lately diſbanded, and where the King's preſence had a little before

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qualified diſcontents. The earl of Lincoln, deceived of his hopes of the countries concourſe unto him (in which caſe he would have temporized) and ſeeing the buſineſs paſt retraict, reſolved to make on where the King was, and to give him battle; and thereupon marched towards Newark, thinking to have ſurprized the town. But the King was ſomewhat before this time come to Nottingham, where he called a council of war, at which was conſulted whether it were beſt to protract time, or ſpeedily to ſet upon the rebels. In which council the King himſelf (whoſe continual vigilancy did ſuck in ſometimes cauſeleſs ſuſpicions, which few elſe knew) inclined to the accelerating a battle; but this was preſently put out of doubt, by the great aids that came in to him in the inſtant of this conſultation, partly upon miſſives, and partly voluntaries, from many parts of the kingdom.

The principal perſons that came then to the King's aid, were the earl of Shrewſbury, and the lord Strange of the nobility; and of knights and gentlemen, to the number of at leaſt threeſcore and ten perſons, with their companies, making in the whole, at the leaſt, ſix thouſand fighting men, beſides the forces that were with the King before. Whereupon the King, finding his army ſo bravely reinforced, and a great alacrity in all his men to fight, was confirmed in his former reſolution, and marched ſpeedily, ſo as he put himſelf between the enemies camp and Newark; being loth their army ſhould get the commodity of that town. The earl, nothing diſmayed, came forwards that day unto a little village called Stoke, and there encamped that night, upon the brow or hanging of a hill. The King the next day preſented him battle upon the plain, the fields there being open and champion. The earl courageouſly came down and joined battle with him. Concerning which battle the relations that are left unto us are ſo naked and negligent (though it be an action of ſo recent memory) as they rather declare the ſucceſs of the day, than the manner of the fight. They ſay, that the King divided his army into three battails; whereof the vant-guard only, well ſtrengthened with wings, came to fight: That the fight was fierce and obſtinate, and laſted three hours, before the victory inclined either way; ſave that judgment might be made by that the King's vant-guard of itſelf maintained fight againſt the whole power of the enemies (the other two battails remaining out of action) what the ſucceſs was like to be in the end: That Martin Swart with his Germans performed bravely, and ſo did thoſe few Engliſh that were on that ſide; neither did the Iriſh fail in courage or fierceneſs; but being almoſt naked men, only armed with darts and ſkeins, it was rather an execution than a fight upon them; inſomuch as the furious ſlaughter of them was a great diſcouragement and appalement to the reſt: That there died upon the place all the chieftains; that is, the earl of Lincoln, the earl of Kildare, Frances lord Lovel, Martin Swart, and Sir Thomas Broughton; all making good the fight, without any ground given. Only of the lord Lovel there went a report, that he fled and ſwam over Trent on horſeback, but could not recover the farther ſide, by reaſon of the ſteepneſs of the bank, and ſo was drowned in the river. But another report leaves him not there, but that he lived long after in a cave or vault. The number that was ſlain in the field, was of the enemies part four thouſand at the leaſt; and of the King's part, one half of his vant-guard, beſides many hurt, but none of name. There were taken priſoners, amongſt others, the counterfeit Plantagenet (now Lambert Simnell again) and the crafty prieſt his tutor. For Lambert, the King would not take his life, both out of magnanimity, taking him but as an image of wax, that others had tempered and moulded; and likewiſe out of wiſdom, thinking that if he ſuffered death, he would be forgotten too ſoon; but being kept alive, he would be a continual ſpectacle, and a kind of remedy againſt the like inchantments of people in time to come. For which cauſe he was taken into ſervice in his court to a baſe office in his kitchen; ſo that (in a kind of *mattacina* of human fortune) he turned a broach, that had worn a crown; whereas fortune commonly doth not bring in a comedy or farce after a tragedy. And afterwards he was preferred to be one of the King's falconers. As to the prieſt, he was committed cloſe priſoner, and heard of no more; the King loving to ſeal up his own dangers.

After the battle the King went to Lincoln, where he cauſed ſupplications and thankſgivings to be made for his deliverance and victory. And that his devotions might go round in circle, he ſent his banner to be offered to our lady of Walſingham, where before he made his vows. And thus delivered of this ſo ſtrange an engine, and new invention of fortune, he returned to his former confidence of mind; thinking now, that all his misfortunes had come at once. But it fell out unto him according to the ſpeech of the common people in the beginning of his reign, that ſaid, It was a token he ſhould reign in labour, becauſe his reign began with a ſickneſs of ſweat. But howſoever the King thought himſelf now in a haven, yet ſuch was his wiſdom, as his confidence did ſeldom darken his foreſight, eſpecially in things near hand. And therefore, awakened by ſo freſh and unexpected dangers, he entered into due conſideration, as well how to weed out the partakers of the former rebellion, as to kill the ſeeds of the like in time to come: and withal to take away all ſhelters and harbours for diſcontented perſons, where they might hatch and foſter rebellions, which afterwards might gather ſtrength and motion. And firſt, he did yet again make a progreſs from Lincoln to the northern parts, though it were indeed rather an itinerary circuit of juſtice, than a progreſs. For all along as he went, with much ſeverity and ſtrict inquiſition, partly by martial law, and partly by commiſſion, were puniſhed, the adherents and aiders of the late rebels. Not all by death (for the field had drawn much blood) but by fines and ranſoms, which ſpared life, and raiſed treaſure. Amongſt other crimes of this nature, there was diligent enquiry made of ſuch as had raiſed and diſperſed a bruit and rumour, a little before the field fought, "that the rebels had the day; and that the "King's army was overthrown, and the King fled." Whereby it was ſuppoſed that many ſuccours, which otherwiſe would have come unto the King, were cunningly put off, and kept back. Which charge and accuſation, though it had ſome ground, yet it was induſtriouſly embraced and put on by divers, who having been in themſelves not the beſt affected to the King's part, nor forward to come to his aid, were glad to apprehend this colour to cover their neglect and coldneſs, under the pretence of ſuch diſcouragements. Which cunning nevertheleſs the King would not underſtand, though he lodged it, and noted it in ſome particulars, as his manner was.

But for the extirpating of the roots and cauſes of the like commotions in time to come, the King began to find where his ſhoe did wring him, and that it was his depreſſing of the houſe of York that did rankle and feſter the affections of his people. And therefore being now too wiſe to diſdain perils any longer, and willing to give ſome contentment in that kind (at leaſt in ceremony) he reſolved at laſt to proceed to the coronation of his Queen. And therefore at his coming to London, where he entered in ſtate, and in a kind of triumph, and celebrated his victory with two days of devotion (for the firſt day he repaired to Paul's, and had the hymn of *Te Deum* ſung, and the morrow after he went in proceſſion, and heard the ſermon at the croſs) the Queen was with great ſolemnity crowned at Weſtminſter, the five and twentieth of November, in the third year of his reign, which was about two years after the marriage; like an old chriſtening, that had ſtayed long for godfathers. Which ſtrange and unuſual diſtance of time made it ſubject to every man's note, that it was an act againſt his ſtomach, and put upon him by neceſſity and reaſon of ſtate. Soon after, to ſhew that it was now fair weather again, and that the impriſonment of Thomas marquis Dorſet was rather upon ſuſpicion of the time, than of the man, he, the ſaid marquis, was ſet at liberty, without examination, or other circumſtance. At that time alſo the King ſent an ambaſſador unto Pope Innocent, ſignifying unto him this his marriage; and that now (like another Æneas) he had paſſed through the floods of his former troubles and travels, and was arrived unto a ſafe haven: and thanking his Holineſs that he had honoured the celebration of his marriage with the preſence of his ambaſſador; and offering both his perſon, and the forces of his kingdom, upon all occaſions, to do him ſervice.

The ambaſſador making his oration to the Pope, in the preſence of the cardinals, did ſo magnify the King and Queen, as was enough to glut the hearers.

But then he did again ſo extol and deify the Pope, as made all that he had ſaid in praiſe of his maſter and miſtreſs ſeem temperate and paſſable. But he was very honourably entertained, and extremely much made on by the Pope: who knowing himſelf to be lazy and unprofitable to the Chriſtian world, was wonderfully glad to hear that there were ſuch echoes of him ſounding in remote parts. He obtained alſo of the Pope a very juſt and honourable bull, qualifying the privileges of ſanctuary (wherewith the King had been extremely galled) in three points.

The firſt, that if any ſanctuary man did by night, or otherwiſe, get out of ſanctuary privily, and commit miſchief and treſpaſs, and then come in again, he ſhould loſe the benefit of ſanctuary for ever after. The ſecond, that howſoever the perſon of the ſanctuary man was protected from his creditors, yet his goods out of ſanctuary ſhould not. The third, that if any took ſanctuary for caſe of treaſon, the King might appoint him keepers to look to him in ſanctuary.

The King alſo, for the better ſecuring of his eſtate againſt mutinous and male-contented ſubjects (whereof he ſaw the realm was full) who might have their refuge into Scotland, which was not under key, as the ports were; for that cauſe rather than for any doubt of hoſtility from thoſe parts, before his coming to London (when he was at Newcaſtle) had ſent a ſolemn ambaſſage unto James the third King of Scotland, to treat and conclude a peace with him. The ambaſſadors were, Richard Fox, biſhop of Exeter, and Sir Richard Edgcombe, comptroller of the King's houſe, who were honourably received and entertained there. But the King of Scotland labouring of the ſame diſeaſe that King Henry did (though more mortal, as afterwards appeared) that is, diſcontented ſubjects, apt to riſe and raiſe tumult, although in his own affection he did much deſire to make a peace with the King; yet finding his nobles averſe, and not daring to diſpleaſe them, concluded only a truce for ſeven years; giving nevertheleſs promiſe in private, that it ſhould be renewed from time to time during the two Kings lives.

HITHERTO the King had been exerciſed in ſettling his affairs at home. But about this time brake forth an occaſion that drew him to look abroad, and to hearken to foreign buſineſs. Charles the eighth the French King, by the virtue and good fortune of his two immediate predeceſſors, Charles the ſeventh his grandfather, and Lewis the eleventh his father, received the kingdom of France in more flouriſhing and ſpread eſtate, than it had been of many years before; being redintegrate in thoſe principal members, which anciently had been portions of the crown of France, and were afterward diſſevered, ſo as they remained only in homage, and not in ſovereignty (being governed by abſolute Princes of their own) Anjou, Normandy, Provence, and Burgundy. There remained only Britain to be reunited, and ſo the monarchy of France to be reduced to the ancient terms and bounds.

King Charles was not a little inflamed with an ambition to repurchaſe and reannex that dutchy: which his ambition was a wiſe and well weighed ambition; not like unto the ambitions of his ſucceeding enterprizes of Italy. For at that time, being newly come to the crown, he was ſomewhat guided by his father's counſels (counſels, not counſellors) for his father was his own council, and had few able men about him. And that King (he knew well) had ever diſtaſted the deſigns of Italy, and in particular had an eye upon Britain. There were many circumſtances that did feed the ambition of Charles with pregnant and apparent hopes of ſucceſs: the duke of Britain old, and entered into a lethargy, and ſerved with mercenary counſellors, father of two only daughters, the one ſickly and not like to continue: King Charles himſelf in the flower of his age, and the ſubjects of France at that time well trained for war, both for leaders and ſoldiers; men of ſervice being not yet worn out ſince the wars of Lewis againſt Burgundy. He found himſelf alſo in peace with all his neighbour Princes. As for thoſe that might oppoſe to his enterprize, Maximilian King of the Romans, his rival in the ſame deſires (as well for the dutchy, as the daughter) feeble in means; and King Henry of England as well ſomewhat obnoxious to him for his favours and benefits, as buſied in his particular troubles at home. There was alſo a fair and ſpecious occaſion offered him to hide his ambition,

and to justify his warring upon Britain; for that the duke had received and succoured Lewis, duke of Orleans, and other of the French nobility, which had taken arms against their King. Wherefore King Charles, being resolved upon that war, knew well he could not receive any opposition so potent, as if King Henry should, either upon policy of state, in preventing the growing greatness of France, or upon gratitude unto the duke of Britain, for his former favours in the time of his distress, espouse that quarrel, and declare himself in aid of the duke. Therefore he no sooner heard that King Henry was settled by his victory, but forthwith he sent ambassadors unto him to pray his assistance, or at least that he would stand neutral. Which ambassadors found the King at Leicester, and delivered their ambassage to this effect: They first imparted unto the King the success that their master had had a little before against Maximilian, in recovery of certain towns from him: which was done in a kind of privacy, and inwardness towards the King; as if the French King did not esteem him for an outward or formal confederate, but as one that had part in his affections and fortunes, and with whom he took pleasure to communicate his business. After this complement, and some gratulation for the King's victory, they fell to their errand; declaring to the King, That their master was enforced to enter into a just and necessary war with the duke of Britain, for that he had received and succoured those that were traitors, and declared enemies unto his person and state. That they were no mean, distressed, and calamitous persons that fled to him for refuge, but of so great quality, as it was apparent that they came not thither to protect their own fortune, but to infest and invade his; the head of them being the duke of Orleans, the first Prince of the blood, and the second person of France. That therefore, rightly to understand it, it was rather on their master's part a defensive war, than an offensive; as that that could not be omitted or forborn, if he tendered the conservation of his own estate; and that it was not the first blow that made the war invasive (for that no wise Prince would stay for) but the first provocation, or at least the first preparation; nay, that this war was rather a suppression of rebels, than a war with a just enemy; where the case is, that his subjects, traitors, are received by the duke of Britain his homager. That King Henry knew well what went upon it in example, if neighbour Princes should patronize and comfort rebels, against the law of nations and of leagues. Nevertheless that their master was not ignorant, that the King had been beholden to the duke of Britain in his adversity; as on the other side, they knew he would not forget also the readiness of their King, in aiding him when the duke of Britain, or his mercenary counsellors, failed him, and would have betrayed him; and that there was a great difference between the courtesies received from their master, and the duke of Britain: for that the duke's might have ends of utility and bargain; whereas their master's could not have proceeded but out of entire affection; for that, if it had been measured by a politick line, it had been better for his affairs, that a tyrant should have reigned in England, troubled and hated, than such a Prince, whose virtues could not fail to make him great and potent, whensoever he was come to be master of his affairs. But howsoever it stood for the point of obligation which the King might owe to the duke of Britain, yet, their master was well assured, it would not divert King Henry of England from doing that that was just, nor ever embark him in so ill-grounded a quarrel. Therefore, since this war, which their master was now to make, was but to deliver himself from imminent dangers, their King hoped the King would shew the like affection to the conservation of their master's estate, as their master had (when time was) shewed to the King's acquisition of his kingdom. At the least, that according to the inclination which the King had ever professed of peace, he would look on, and stand neutral; for that their master could not with reason press him to undertake part in the war, being so newly settled, and recovered from intestine seditions. But touching the mystery of reannexing of the dutchy of Britain to the crown of France, either by war, or by marriage with the daughter of Britain, the ambassadors bare aloof from it as from a rock, knowing that it made most against them. And therefore by all means declined any mention thereof, but

contrariwiſe interlaced in their conference with the King, the aſſured purpoſe of their maſter to match with the daughter of Maximilian; and entertained the King alſo with ſome wandring diſcourſes of their King's purpoſe, to recover by arms his right to the kingdom of Naples, by an expedition in perſon; all to remove the King from all jealouſy of any deſign in theſe hither parts upon Britain, otherwiſe than for quenching of the fire, which he feared might be kindled in his own eſtate.

The King, after advice taken with his council, made anſwer to the ambaſſadors: and firſt returned their complement, ſhewing he was right glad of the French King's reception of thoſe towns from Maximilian. Then he familiarly related ſome particular paſſages of his own adventures and victory paſſed. As to the buſineſs of Britain, the King anſwered in few words; that the French King, and the duke of Britain, were the two perſons to whom he was moſt obliged of all men; and that he ſhould think himſelf very unhappy, if things ſhould go ſo between them, as he ſhould not be able to acquit himſelf in gratitude towards them both; and that there was no means for him as a Chriſtian King, and a common friend to them, to ſatisfy all obligations both to God and man, but to offer himſelf for a mediator of an accord and peace between them; by which courſe he doubted not but their King's eſtate, and honour both, would be preſerved with more ſafety and leſs envy than by a war; and that he would ſpare no coſt or pains, no if it were to go on pilgrimage, for ſo good an effect: and concluded, that in this great affair, which he took ſo much to heart, he would expreſs himſelf more fully by an ambaſſage, which he would ſpeedily diſpatch unto the French King for that purpoſe. And in this ſort the French ambaſſadors were diſmiſſed: the King avoiding to underſtand any thing touching the reannexing of Britain, as the ambaſſadors had avoided to mention it; ſave that he gave a little touch of it in the word *envy*. And ſo it was, that the King was neither ſo ſhallow, nor ſo ill advertiſed, as not to perceive the intention of the French for the inveſting himſelf of Britain. But firſt, he was utterly unwilling (howſoever he gave out) to enter into war with France. A fame of a war he liked well, but not an achievement; for the one he thought would make him richer, and the other poorer; and he was poſſeſſed with many ſecret fears touching his own people, which he was therefore loth to arm, and put weapons into their hands. Yet notwithſtanding (as a prudent and courageous Prince) he was not ſo averſe from a war, but that he was reſolved to chuſe it, rather than to have Britain carried by France, being ſo great and opulent a dutchy, and ſituate ſo opportunely to annoy England, either for coaſt or trade. But the King's hopes were, that partly by negligence, commonly imputed to the French (eſpecially in the court of a young King) and partly by the native power of Britain itſelf, which was not ſmall; but chiefly in reſpect of the great party that the duke of Orleans had in the kingdom of France, and thereby means to ſtir up civil troubles, to divert the French King from the enterprize of Britain. And laſtly, in regard of the power of Maximilian, who was corrival to the French King in that purſuit, the enterprize would either bow to a peace, or break in itſelf. In all which the King meaſured and valued things amiſs, as afterwards appeared. He ſent therefore forthwith to the French King, Chriſtopher Urſwick, his chaplain, a perſon by him much truſted and employed: chuſing him the rather, becauſe he was a churchman, as beſt ſorting with an ambaſſy of pacification: and giving him alſo a commiſſion, that if the French King conſented to treat, he ſhould thence repair to the duke of Britain, and ripen the treaty on both parts. Urſwick made declaration to the French King, much to the purpoſe of the King's anſwer to the French ambaſſadors here, inſtilling alſo tenderly ſome overture of receiving to grace the duke of Orleans, and ſome taſte of conditions of accord. But the French King on the other ſide proceeded not ſincerely, but with a great deal of art and diſſimulation, in this treaty; having for his end, to gain time, and ſo put off the Engliſh ſuccours under hope of peace, till he had got good footing in Britain by force of arms. Wherefore he anſwered the ambaſſador, that he would put himſelf into the King's hands, and make him arbiter of the peace; and willingly conſented, that the ambaſſador ſhould ſtraightways paſs into Britain, to ſignify this his conſent, and to know the

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duke's mind likewiſe; well foreſeeing, that the duke of Orleans, by whom the duke of Britain was wholly led, taking himſelf to be upon terms irreconcileable with him, would admit of no treaty of peace. Whereby he ſhould in one, both generally abroad veil over his ambition, and win the reputation of juſt and moderate proceedings; and ſhould withal endear himſelf in the affections of the King of England, as one that had committed all to his will: nay, and (which was yet more fine) make faith in him, that although he went on with the war, yet it ſhould be but with his ſword in his hand, to bend the ſtiffneſs of the other party to accept of peace; and ſo the King ſhould take no umbrage of his arming and proſecution; but the treaty to be kept on foot to the very laſt inſtant, till he were maſter of the field.

Which grounds being by the French King wiſely laid, all things fell out as he expected. For when the Engliſh ambaſſador came to the court of Britain, the duke was then ſcarcely perfect in his memory, and all things were directed by the duke of Orleans, who gave audience to the chaplain Urſwick, and upon his ambaſſage delivered made anſwer in ſomewhat high terms: That the duke of Britain having been an hoſt, and a kind of parent or foſter-father to the King, in his tenderneſs of age, and weakneſs of fortune, did look for at this time from King Henry (the renowned King of England) rather brave troops for his ſuccours, than a vain treaty of peace. And if the King could forget the good offices of the duke done unto him aforetime; yet, he knew well, he would in his wiſdom conſider of the future, how much it imported his own ſafety and reputation, both in foreign parts, and with his own people, not to ſuffer Britain (the old confederates of England) to be ſwallowed up by France, and ſo many good ports and ſtrong towns upon the coaſt be in the command of ſo potent a neighbour King, and ſo ancient an enemy. And therefore humbly deſired the King to think of this buſineſs as his own: and therewith brake off, and denied any farther conference for treaty.

Urſwick returned firſt to the French King, and related to him what had paſſed. Who finding things to ſort to his deſire, took hold of them, and ſaid; That the ambaſſador might perceive now that, which he for his part partly imagined before. That conſidering in what hands the duke of Britain was, there would be no peace, but by a mixed treaty of force and perſuaſion: and therefore he would go on with the one, and deſired the King not to deſiſt from the other. But for his own part, he did faithfully promiſe to be ſtill in the King's power, to rule him in the matter of peace. This was accordingly repreſented unto the King by Urſwick at his return, and in ſuch a faſhion, as if the treaty were in no ſort deſperate, but rather ſtayed for a better hour, till the hammer had wrought, and beat the party of Britain more pliant. Whereupon there paſſed continually packets and diſpatches between the two Kings, from the one out of deſire, and from the other out of diſſimulation, about the negociation of peace. The French King mean while invaded Britain with great forces, and diſtreſſed the city of Nantz with a ſtrait ſiege, and (as one, who though he had no great judgment, yet had that, that he could diſſemble at home) the more he did urge the proſecution of the war, the more he did, at the ſame time, urge the ſolicitation of the peace. Inſomuch as during the ſiege of Nantz, after many letters and particular meſſages, the better to maintain his diſſimulation, and to refreſh the treaty, he ſent Bernard D'Aubigney (a perſon of good quality) to the King, earneſtly to deſire him, to make an end of the buſineſs howſoever.

The King was no leſs ready to revive and quicken the treaty; and thereupon ſent three commiſſioners, the abbot of Abingdon, Sir Richard Tunſtal, and chaplain Urſwick formerly employed, to do their utmoſt endeavours to manage the treaty roundly and ſtrongly.

About this time the lord Woodvile (uncle to the Queen) a valiant gentleman, and deſirous of honour, ſued to the King that he might raiſe ſome power of voluntaries under-hand, and without licence or paſſport (wherein the King might any ways appear) go to the aid of the duke of Britain. The King denied his requeſt (or at leaſt ſeemed ſo to do) and laid ſtrait commandment upon him, that he ſhould not ſtir, for that the King thought his honour would ſuffer

therein, during a treaty, to better a party. Nevertheleſs this lord (either being unruly, or out of conceit that the King would not inwardly diſlike that, which he would not openly avow) ſailed ſecretly over into the iſle of Wight, whereof he was governor, and levied a fair troop of four hundred men, and with them paſſed over into Britain, and joined himſelf with the duke's forces. The news whereof, when it came to the French court, put divers young bloods into ſuch a fury, as the Engliſh ambaſſadors were not without peril to be outraged. But the French King, both to preſerve the privilege of ambaſſadors, and being conſcious to himſelf, that in the buſineſs of peace he himſelf was the greater diſſembler of the two, forbad all injuries of fact or word, againſt their perſons or followers. And preſently came an agent from the King, to purge himſelf touching the lord Woodvile's going over; uſing for a principal argument, to demonſtrate that it was without his privity, for that the troops were ſo ſmall, as neither had the face of a ſuccour by authority, nor could much advance the Britain affairs. To which meſſage although the French King gave no full credit, yet he made fair weather with the King, and ſeemed ſatisfied. Soon after the Engliſh ambaſſadors returned, having two of them been likewiſe with the duke of Britain, and found things in no other terms than they were before. Upon their return, they informed the King of the ſtate of the affairs, and how far the French King was from any true meaning of peace; and therefore he was now to adviſe of ſome other courſe: neither was the King himſelf led all this while with credulity merely, as was generally ſuppoſed: but his error was not ſo much facility of belief, as an ill meaſuring of the forces of the other party.

For (as was partly touched before) the King had caſt the buſineſs thus with himſelf. He took it for granted in his own judgment, that the war of Britain, in reſpect of the ſtrength of the towns, and of the party, could not ſpeedily come to a period. For he conceived, that the counſels of a war, that was undertaken by the French King, then childleſs, againſt an heir apparent of France, would be very faint and ſlow; and, beſides, that it was not poſſible, but that the ſtate of France ſhould be embroiled with ſome troubles and alterations in favour of the duke of Orleans. He conceived likewiſe, that Maximilian King of the Romans was a Prince warlike and potent; who (he made account) would give ſuccours to the Britains roundly. So then judging it would be a work of time, he laid his plot, how he might beſt make uſe of that time for his own affairs. Wherein firſt he thought to make his vantage upon his parliament; knowing that they being affectionate unto the quarrel of Britain, would give treaſure largely: which treaſure, as a noiſe of war might draw forth, ſo a peace ſucceeding might coffer up. And becauſe he knew his people were hot upon the buſineſs, he choſe rather to ſeem to be deceived, and lulled aſleep by the French, than to be backward in himſelf; conſidering his ſubjects were not ſo fully capable of the reaſons of ſtate, which made him hold back. Wherefore to all theſe purpoſes he ſaw no other expedient, than to ſet and keep on foot a continual treaty of peace, laying it down, and taking it up again, as the occurrence required. Beſides, he had in conſideration the point of honour, in bearing the bleſſed perſon of a pacificator: He thought likewiſe to make uſe of the envy that the French King met with, by occaſion of this war of Britain, in ſtrengthening himſelf with new alliances; as namely, that of Ferdinando of Spain, with whom he had ever a conſent even in nature and cuſtoms; and likewiſe with Maximilian, who was particularly intereſted. So that in ſubſtance he promiſed himſelf money, honour, friends, and peace in the end. But thoſe things were too fine to be fortunate, and ſucceed in all parts; for that great affairs are commonly too rough and ſtubborn to be wrought upon by the finer edges, or points of wit. The King was likewiſe deceived in his two main grounds. For although he had reaſon to conceive that the council of France would be wary to put the King into a war againſt the heir apparent of France; yet he did not conſider that Charles was not guided by any of the principal of the blood or nobility, but by mean men, who would make it their maſter-piece of credit and favour, to give venturous counſels, which no great or wiſe man durſt, or would. And for Maximilian, he was thought then a greater matter than he was; his unſtable and neceſſitous courſes being not then known.

After

After conſultation with the ambaſſadors, who brought him no other news than he expected before (though he would not ſeem to know it till then) he preſently ſummoned his parliament, and in open parliament propounded the cauſe of Britain to both houſes, by his chancellor Moreton, archbiſhop of Canterbury, who ſpake to this effect.

"MY lords and maſters, the King's grace, our ſovereign lord, hath commanded me to declare unto you the cauſes that have moved him at this time "to ſummon this his parliament; which I ſhall do in few words, craving par- "don of his grace, and you all, if I perform it not as I would.

"His grace doth firſt of all let you know, that he retaineth in thankful me- "mory the love and loyalty ſhewed to him by you, at your laſt meeting, in eſta- "bliſhment of his royalty; freeing and diſcharging of his partakers, and confiſ- "cation of his traitors and rebels; more than which could not come from ſub- "jects to their ſovereign, in one action. This he taketh ſo well at your hands, as "he hath made it a reſolution to himſelf, to communicate with ſo loving and well "approved ſubjects, in all affairs that are of publick nature, at home or abroad.

"Two therefore are the cauſes of your preſent aſſembling: the one, a foreign "buſineſs; the other, matter of government at home.

"The French King (as no doubt ye have heard) maketh at this preſent hot "war upon the duke of Britain. His army is now before Nantz, and holdeth "it ſtraitly beſieged, being the principal city (if not in ceremony and prehemi- "nence, yet in ſtrength and wealth) of that dutchy. Ye may gueſs at his hopes, "by his attempting of the hardeſt part of the war firſt. The cauſe of this war "he knoweth beſt. He alledgeth the entertaining and ſuccouring of the duke of "Orleans, and ſome other French lords, whom the King taketh for his enemies. "Others divine of other matters. Both parts have, by their ambaſſadors divers "times prayed the King's aids; the French King aids or neutrality; the "Britains aids ſimply; for ſo their caſe requireth. The King, as a Chriſtian "Prince, and bleſſed ſon of the holy church, hath offered himſelf as a mediator, "to treat of peace between them. The French King yielded to treat, but will "not ſtay the proſecution of the war. The Britains, that deſire peace moſt, "hearken to it leaſt; not upon confidence or ſtiffneſs, but upon diſtruſt of true "meaning, ſeeing the war goes on. So as the King, after as much pains and "care to effect a peace, as ever he took in any buſineſs, not being able to re- "move the proſecution on the one ſide, nor the diſtruſt on the other, cauſed "by that proſecution, hath let fall the treaty; not repenting of it, but deſpair- "ing of it now, as not likely to ſucceed. Therefore by this narrative you now "underſtand the ſtate of the queſtion, whereupon the King prayeth your ad- "vice; which is no other, but whether he ſhall enter into an auxiliary and "defenſive war for the Britains againſt France?

"And the better to open your underſtandings in this affair, the King hath "commanded me to ſay ſomewhat to you from him, of the perſons that do "intervene in this buſineſs; and ſomewhat of the conſequence thereof, as it "hath relation to this kingdom, and ſomewhat of the example of it in general: "making nevertheleſs no concluſion or judgment of any point, until his grace "hath received your faithful and politick advices.

"Firſt, for the King our ſovereign himſelf, who is the principal perſon you "are to eye in this buſineſs; his grace doth profeſs, that he truly and conſtantly "deſireth to reign in peace. But his grace ſaith, he will neither buy peace with "diſhonour, nor take it up at intereſt of danger to enſue; but ſhall think it a "good change, if it pleaſe God to change the inward troubles and ſeditions, "wherewith he hath been hitherto exerciſed, into an honourable foreign war. "And for the other two perſons in this action, the French King, and the duke of "Britain, his grace doth declare unto you, that they be the men unto whom he "is of all other friends and allies moſt bounden: the one having held over him "his hand of protection from the tyrant; the other having reached forth unto "him his hand of help, for the recovery of his kingdom. So that his affection "toward them in his natural perſon, is upon equal terms. And whereas you "may have heard, that his grace was enforced to fly out of Britain into France,

" for doubts of being betrayed; his grace would not in any ſort have that reflect " upon the duke of Britain, in defacement of his former benefits; for that he is " throughly informed, that it was but the practice of ſome corrupt perſons about " him, during the time of his ſickneſs, altogether without his conſent or privity.

" But howſoever theſe things do intereſt his grace in his particular, yet he " knoweth well, that the higher bond that tieth him to procure by all means " the ſafety and welfare of his loving ſubjects, doth diſintereſt him of theſe " obligations of gratitude, otherwiſe than thus; that if his grace be forced to " make a war, he do it without paſſion or ambition.

" For the conſequence of this action towards this kingdom, it is much as the " French King's intention is. For if it be no more, but to range his ſubjects to " reaſon, who bear themſelves ſtout upon the ſtrength of the duke of Britain, it " is nothing to us. But if it be in the French King's purpoſe, or if it ſhould not " be in his purpoſe, yet if it ſhall follow all one, as if it were ſought, that the " French King ſhall make a province of Britain, and join it to the crown of " France; then it is worthy the conſideration, how this may import England, as " well in the increaſement of the greatneſs of France, by the addition of ſuch a " country, that ſtretcheth his boughs unto our ſeas, as in depriving this nation, " and leaving it naked of ſo firm and aſſured confederates, as the Britains have " always been. For then it will come to paſs, that whereas not long ſince this " realm was mighty upon the continent, firſt in territory, and after in alliance, in " reſpect of Burgundy and Britain, which were confederates indeed, but dependent " confederates; now the one being already caſt, partly into the greatneſs of France, " and partly into that of Auſtria, the other is like wholly to be caſt into the great- " neſs of France; and this iſland ſhall remain confined in effect within the ſalt " waters, and girt about with the coaſt countries of two mighty monarchs.

" For the example, it reſteth likewiſe upon the ſame queſtion, upon the " French King's intent. For if Britain be carried and ſwallowed up by France, " as the world abroad (apt to impute and conſtrue the actions of Princes to am- " bition) conceive it will; then it is an example very dangerous and univerſal, " that the leſſer neighbour eſtate ſhould be devoured of the greater. For this " may be the caſe of Scotland towards England; of Portugal towards Spain; " of the ſmaller eſtates of Italy towards the greater; and ſo of Germany; or " as if ſome of you of the commons might not live and dwell ſafely beſides " ſome of theſe great lords. And the bringing in of this example will be " chiefly laid to the King's charge, as to him that was moſt intereſted, and " moſt able to forbid it. But then on the other ſide, there is ſo fair a pretext " on the French King's part (and yet pretext is never wanting to power) in " regard the danger imminent to his own eſtate is ſuch, as may make this en- " terprize ſeem rather a work of neceſſity than of ambition, as doth in reaſon " correct the danger of the example. For that the example of that which is " done in a man's own defence, cannot be dangerous; becauſe it is in another's " power to avoid it. But in all this buſineſs, the King remits himſelf to your " grave and mature advice, whereupon he purpoſeth to rely."

This was the effect of the lord Chancellor's ſpeech touching the cauſe of Britain; for the King had commanded him to carry it ſo, as to affect the parliament towards the buſineſs; but without engaging the King in any expreſs declaration.

The Chancellor went on:

" For that which may concern the government at home, the King hath com- " manded me to ſay unto you; that he thinketh there was never any King (for " the ſmall time that he hath reigned) had greater and juſter cauſe of the two " contrary paſſions of joy and ſorrow, than his grace hath. Joy, in reſpect of " the rare and viſible favours of Almighty God, in girding the imperial ſword " upon his ſide, and aſſiſting the ſame his ſword againſt all his enemies; and " likewiſe in bleſſing him with ſo many good and loving ſervants and ſubjects, " which have never failed to give him faithful counſel, ready obedience, and " courageous defence. Sorrow, for that it hath not pleaſed God to ſuffer him " to ſheath his ſword (as he greatly deſired, otherwiſe than for adminiſtration

" of

" of juſtice) but that he hath been forced to draw it ſo oft, to cut off traitorous " and diſloyal ſubjects, whom (it ſeems) God hath left (a few amongſt many " good) as the Canaanites amongſt the people of Iſrael, to be thorns in their " ſides, to tempt and try them; though the end hath been always (God's name " be bleſſed therefor) that the deſtruction hath fallen upon their own heads.

" Wherefore his grace ſaith; That he ſeeth that it is not the blood ſpilt in " the field that will ſave the blood in the city; nor the marſhal's ſword that " will ſet this kingdom in perfect peace: but that the true way is, to ſtop the " ſeeds of ſedition and rebellion in their beginnings; and for that purpoſe to " deviſe, confirm, and quicken good and wholeſome laws againſt riots, and un- " lawful aſſemblies of people, and all combinations and confederacies of them, " by liveries, tokens, and other badges of factious dependance; that the peace " of the land may by theſe ordinances, as by bars of iron, be ſoundly bound " in and ſtrengthened, and all force, both in court, country, and private " houſes, be ſuppreſt. The care hereof, which ſo much concerneth yourſelves, " and which the nature of the times doth inſtantly call for, his grace commends " to your wiſdoms.

" And becauſe it is the King's deſire, that this peace, wherein he hopeth to " govern and maintain you, do not bear only unto you leaves, for you to ſit " under the ſhade of them in ſafety; but alſo ſhould bear you fruit of riches, " wealth, and plenty: therefore his grace prays you to take into conſideration " matter of trade, as alſo the manufactures of the kingdom, and to repreſs the " baſtard and barren employment of moneys to uſury and unlawful exchanges; " that they may be (as their natural uſe is) turned upon commerce, and lawful " and royal trading. And likewiſe that our people be ſet on work in arts and " handicrafts; that the realm may ſubſiſt more of itſelf; that idleneſs be avoided, " and the draining out of our treaſure for foreign manufactures ſtopped. But you " are not to reſt here only, but to provide farther, that whatſoever merchandize " ſhall be brought in from beyond the ſeas, may be employed upon the com- " modities of this land; whereby the kingdom's ſtock of treaſure may be ſure " to be kept from being diminiſhed, by any over-trading of the foreigner.

" And laſtly, becauſe the King is well aſſured, that you would not have him " poor, that wiſhes you rich; he doubteth not but that you will have care, as " well to maintain his revenues of cuſtoms, and all other natures, as alſo to " ſupply him with your loving aids, if the caſe ſhall ſo require. The rather, " for that you know the King is a good huſband, and but a ſteward in effect " for the publick; and that what comes from you, is but as moiſture drawn " from the earth, which gathers into a cloud, and falls back upon the earth " again. And you know well, how the kingdoms about you grow more and " more in greatneſs, and the times are ſtirring; and therefore not fit to find the " King with an empty purſe. More I have not to ſay to you; and wiſh, that " what hath been ſaid, had been better expreſſed: but that your wiſdoms and " good affections will ſupply. God bleſs your doings."

It was no hard matter to diſpoſe and affect the parliament in this buſineſs; as well in reſpect of the emulation between the nations, and the envy at the late growth of the French monarchy; as in regard of the danger to ſuffer the French to make their approaches upon England, by obtaining ſo goodly a maritime province, full of ſea-towns, and havens, that might do miſchief to the Engliſh, either by invaſion, or by interruption of traffick. The parliament was alſo moved with the point of oppreſſion; for although the French ſeemed to ſpeak reaſon, yet arguments are ever with multitudes too weak for ſuſpicions. Wherefore they did adviſe the King, roundly to embrace the Britons quarrel, and to ſend them ſpeedy aids; and with much alacrity and forwardneſs granted to the King a great rate of ſubſidy, in contemplation of theſe aids. But the King, both to keep a decency towards the French King, to whom he profeſt himſelf to be obliged, and indeed deſirous rather to ſhew war, than to make it; ſent new ſolemn ambaſſadors to intimate unto him the decree of his eſtates, and to iterate his motion, that the French would deſiſt from hoſtility; or if war muſt

follow, to desire him to take it in good part, if at the motion of his people, who were sensible of the cause of the Britons as their ancient friends and confederates, he did send them succours; with protestation nevertheless, that, to save all treaties and laws of friendship, he had limited his forces, to proceed in aid of the Britons, but in no wise to war upon the French, otherwise than as they maintained the possession of Britain. But before this formal ambassage arrived, the party of the duke had received a great blow, and grew to manifest declination. For near the town of St. Alban in Britain, a battle had been given, where the Britons were overthrown, and the duke of Orleans, and the prince of Orange taken prisoners, there being slain on the Britons part six thousand men, and amongst them the lord Woodvile, and almost all his soldiers, valiantly fighting. And of the French part, one thousand two hundred, with their leader James Galeot, a great commander.

When the news of this battle came over into England, it was time for the King (who now had no subterfuge to continue farther treaty, and saw before his eyes that Britain went so speedily for lost, contrary to his hopes; knowing also that with his people, and foreigners both, he sustained no small envy and disreputation for his former delays) to dispatch with all possible speed his succours into Britain; which he did under the conduct of Robert lord Brooke, to the number of eight thousand choice men, and well armed; who having a fair wind, in few hours landed in Britain, and joined themselves forthwith to those Briton forces that remained after the defeat, and marched straight on to find the enemy, and encamped fast by them. The French wisely husbanding the possession of a victory, and well acquainted with the courage of the English, especially when they are fresh, kept themselves within their trenches, being strongly lodged, and resolved not to give battle. But mean while, to harrass and weary the English, they did upon all advantages set upon them with their light horse; wherein nevertheless they received commonly loss, especially by means of the English archers.

But upon these atchievements Francis duke of Britain deceased; an accident that the King might easily have foreseen, and ought to have reckoned upon and provided for, but that the point of reputation, when news first came of the battle lost (that somewhat must be done) did overbear the reason of war.

After the duke's decease, the principal persons of Britain, partly bought, partly through faction, put all things into confusion; so as the English not finding head or body with whom to join their forces, and being in jealousy of friends, as well as in danger of enemies, and the winter begun, returned home five months after their landing. So the battle of St. Alban, the death of the duke, and the retire of the English succours, were (after some time) the causes of the loss of that dutchy; which action some accounted as a blemish of the King's judgment, but most but as the misfortune of his times.

But howsoever the temporary fruit of the parliament, in their aid and advice given for Britain, took not, nor prospered not; yet the lasting fruit of parliament, which is good and wholesome laws, did prosper, and doth yet continue to this day. For, according to the lord Chancellor's admonition, there were that parliament divers excellent laws ordained, concerning the points which the King recommended.

First, the authority of the star-chamber, which before subsisted by the ancient common laws of the realm, was confirmed in certain cases by act of parliament. This court is one of the sagest and noblest institutions of this kingdom. For in the distribution of courts of ordinary justice (besides the high court of parliament) in which distribution the King's bench holdeth the pleas of the crown, the common-place pleas civil, the exchequer pleas concerning the King's revenue, and the chancery the Pretorian power for mitigating the rigour of law, in case of extremity, by the conscience of a good man; there was nevertheless always reserved a high and preheminent power to the King's council, in causes that might in example or consequence concern the state of the commonwealth; which if they were criminal, the council used to sit in the chamber called the star-chamber; if civil, in the white-chamber, or white-hall. And as the chancery had the Pretorian power for equity; so the star-chamber had the

Cenſorian power for offences under the degree of capital. This court of ſtar-chamber is compounded of good elements, for it conſiſteth of four kinds of perſons, counſellors, peers, prelates, and chief judges. It diſcerneth alſo principally of four kinds of cauſes, forces, frauds, crimes various of ſtellionate, and the inchoations or middle acts towards crimes capital or heinous, not actually committed or perpetrated. But that which was principally aimed at by this act was force, and the two chief ſupports of force, combination of multitudes, and maintenance or headſhip of great perſons.

From the general peace of the country, the King's care went on to the peace of the King's houſe, and the ſecurity of his great officers and counſellors. But this law was ſomewhat of a ſtrange compoſition and temper. That if any of the King's ſervants under the degree of a lord, do conſpire the death of any of the King's council, or lord of the realm, it is made capital. This law was thought to be procured by the lord Chancellor, who being a ſtern and haughty man, and finding he had ſome mortal enemies in court, provided for his own ſafety; drowning the envy of it in a general law, by communicating the privilege with all other counſellors and peers, and yet not daring to extend it farther than to the King's ſervants in check-roll, leſt it ſhould have been too harſh to the gentlemen, and other commons of the kingdom; who might have thought their ancient liberty, and the clemency of the laws of England invaded, if the will in any caſe of felony ſhould be made the deed. And yet the reaſon which the act yieldeth (that is to ſay, that he that conſpireth the death of counſellors, may be thought indirectly, and by a mean, to conſpire the death of the King himſelf) is indifferent to all ſubjects, as well as to ſervants in court. But it ſeemeth this ſufficed to ſerve the lord Chancellor's turn at this time. But yet he lived to need a general law, for that he grew afterwards as odious to the country, as he was then to the court.

From the peace of the King's houſe, the King's care extended to the peace of private houſes and families. For there was an excellent moral law moulded thus; the taking and carrying away of women forcibly, and againſt their will (except female-wards and bond-women) was made capital. The parliament wiſely and juſtly conceiving, that the obtaining of women by force into poſſeſſion (howſoever afterwards aſſent might follow by allurements) was but a rape drawn forth in length, becauſe the firſt force drew on all the reſt.

There was made alſo another law for peace in general, and repreſſing of murders and manſlaughters, and was in amendment of the common laws of the realm; being this: That whereas by the common law the King's ſuit, in caſe of homicide, did expect the year and the day, allowed to the party's ſuit by way of appeal; and that it was found by experience, that the party was many times compounded with, and many times wearied with the ſuit, ſo that in the end ſuch ſuit was let fall, and by that time the matter was in a manner forgotten, and thereby proſecution at the King's ſuit by indictment (which is ever beſt, *flagrante crimine)* neglected; it was ordained, that the ſuit by indictment might be taken as well at any time within the year and the day, as after; not prejudicing nevertheleſs the party's ſuit.

The King began alſo then, as well in wiſdom as in juſtice, to pare a little the privilege of clergy, ordaining, that clerks convict ſhould be burned in the hand; both becauſe they might taſte of ſome corporal puniſhment, and that they might carry a brand of infamy. But for this good act's ſake, the King himſelf was after branded, by Perkin's proclamation, for an execrable breaker of the rites of holy church.

Another law was made for the better peace of the country; by which law the King's officers and farmers were to forfeit their places and holds, in caſe of unlawful retainer, or partaking in routs and unlawful aſſemblies.

Theſe were the laws that were made for repreſſing of force, which thoſe times did chiefly require; and were ſo prudently framed, as they are found fit for all ſucceeding times, and ſo continue to this day.

There were alſo made good and politick laws that parliament, againſt uſury, which is the baſtard uſe of money; and againſt unlawful chevances and exchanges,

which

which is baſtard uſury; and alſo for the ſecurity of the King's cuſtoms; and for the employment of the procedures of foreign commodities, brought in by merchant-ſtrangers, upon the native commodities of the realm; together with ſome other laws of leſs importance.

But howſoever the laws made in that parliament did bear good and wholeſome fruit; yet the ſubſidy granted at the ſame time bare a fruit that proved harſh and bitter. All was inned at laſt into the King's barn, but it was after a ſtorm. For when the commiſſioners entered into the taxation of the ſubſidy in Yorkſhire, and the biſhoprick of Dureſm; the people upon a ſudden grew into great mutiny, and ſaid openly, That they had endured of late years a thouſand miſeries, and neither could nor would pay the ſubſidy. This (no doubt) proceeded not ſimply of any preſent neceſſity, but much by reaſon of the old humour of thoſe countries, where the memory of King Richard was ſo ſtrong, that it lay like lees in the bottom of mens hearts; and if the veſſel was but ſtirred, it would come up. And (no doubt) it was partly alſo by the inſtigation of ſome factious malecontents, that bare principal ſtroke amongſt them. Hereupon the commiſſioners being ſomewhat aſtoniſhed, deferred the matter unto the earl of Northumberland, who was the principal man of authority in thoſe parts. The earl forthwith wrote unto the court, ſignifying to the King plainly enough in what flame he found the people of thoſe countries, and praying the King's direction. The King wrote back peremptorily, That he would not have one penny abated, of that which had been granted to him by parliament; both becauſe it might encourage other countries, to pray the like releaſe or mitigation; and chiefly, becauſe he would never endure that the baſe multitude ſhould fruſtrate the authority of the parliament, wherein their votes and conſents were concluded. Upon this diſpatch from court, the earl aſſembled the principal juſtices and freeholders of the country; and ſpeaking to them in that imperious language, wherein the King had written to him, which needed not (ſave that an harſh buſineſs was unfortunately fallen into the hands of a harſh man) did not only irritate the people, but make them conceive, by the ſtoutneſs and haughtineſs of delivery of the King's errand, that himſelf was the author or principal perſuader of that counſel: whereupon the meaner ſort routed together, and ſuddenly aſſailing the earl in his houſe, ſlew him, and divers of his ſervants. And reſted not there, but creating for their leader Sir John Egremond, a factious perſon, and one that had of a long time born an ill talent towards the King; and being animated alſo by a baſe fellow, called John a Chamber, a very *boutefeu*, who bare much ſway amongſt the vulgar and popular, entered into open rebellion; and gave out in flat terms, that they would go againſt King Henry, and fight with him for the maintenance of their liberties.

When the King was advertiſed of this new inſurrection (being almoſt a fever, that took him every year) after his manner little troubled therewith, he ſent Thomas earl of Surry (whom he had a little before not only releaſed out of the Tower, and pardoned, but alſo received to ſpecial favour) with a competent power againſt the rebels, who fought with the principal band of them, and defeated them, and took alive John a Chamber, their firebrand. As for Sir John Egremond, he fled into Flanders to the lady Margaret of Burgundy, whoſe palace was the ſanctuary and receptacle of all traitors againſt the King. John a Chamber was executed at York in great ſtate; for he was hanged upon a gibbet raiſed a ſtage higher in the midſt of a ſquare gallows, as a traitor paramount; and a number of his men that were his chief complices, were hanged upon the lower ſtory round about him; and the reſt were generally pardoned. Neither did the King himſelf omit his cuſtom, to be firſt or ſecond in all his warlike exploits, making good his word, which was uſual with him when he heard of rebels, that he deſired but to ſee them. For immediately after he had ſent down the earl of Surry, he marched towards them himſelf in perſon. And although in his journey he heard news of the victory, yet he went on as far as York, to pacify and ſettle thoſe countries: and that done, returned to London, leaving the earl of Surry for his lieutenant in the northern parts, and Sir Richard Tunſtal for his principal commiſſioner, to levy the ſubſidy, whereof he did not remit a denier.

About

About the ſame time that the King loſt ſo good a ſervant as the earl of Northumberland, he loſt likewiſe a faithful friend and ally of James the third, King of Scotland, by a miſerable diſaſter. For this unfortunate Prince, after a long ſmother of diſcontent, and hatred of many of his nobility and people, breaking forth at times into ſeditions and alterations of court, was at laſt diſtreſſed by them, having taken arms, and ſurprized the perſon of Prince James his ſon, partly by force, partly by threats that they would otherwiſe deliver up the kingdom to the King of England, to ſhadow their rebellion, and to be the titular and painted head of thoſe arms. Whereupon the King (finding himſelf too weak) ſought unto King Henry, as alſo unto the Pope, and the King of France, to compoſe thoſe troubles between him and his ſubjects. The Kings accordingly interpoſed their mediation in a round and princely manner: not only by way of requeſt and perſuaſion, but alſo by way of proteſtation and menace; declaring, That they thought it to be the common cauſe of all Kings, if ſubjects ſhould be ſuffered to give laws unto their ſovereign; and that they would accordingly reſent it, and revenge it. But the rebels, that had ſhaken off the greater yoke of obedience, had likewiſe caſt away the leſſer tye of reſpect. And fury prevailing above fear, made anſwer; That there was no talking of peace, except the King would reſign his crown. Whereupon (treaty of accord taking no place) it came to a battle of Bannockſbourn by Strivelin: in which battle the King, tranſported with wrath and juſt indignation, inconſiderately fighting and precipitating the charge, before his whole numbers came up to him, was (notwithſtanding the contrary expreſs and ſtrait commandment of the Prince his ſon) ſlain in the purſuit, being fled to a mill, ſituate in the field, where the battle was fought.

As for the Pope's ambaſſy, which was ſent by Adrian de Caſtello an Italian legate (and perhaps as thoſe times were, might have prevailed more) it came too late for the ambaſſy, but not for the ambaſſador. For paſſing through England, and being honourably entertained, and received of King Henry (who ever applied himſelf with much reſpect to the ſee of Rome) he fell into great grace with the King, and great familiarity and friendſhip with Morton the Chancellor: inſomuch as the King taking a liking to him, and finding him to his mind, preferred him to the biſhoprick of Hereford, and afterwards to that of Bath and Wells, and employed him in many of his affairs of ſtate, that had relation to Rome. He was a man of great learning, wiſdom, and dexterity in buſineſs of ſtate; and having not long after aſcended to the degree of cardinal, paid the King large tribute of his gratitude, in diligent and judicious advertiſement of the occurrents of Italy. Nevertheleſs, in the end of his time, he was partaker of the conſpiracy, which cardinal Alphonſo Petrucci, and ſome other cardinals, had plotted againſt the life of Pope Leo. And this offence, in itſelf ſo heinous, was yet in him aggravated by the motive thereof, which was not malice or diſcontent, but an aſpiring mind to the papacy. And in this height of impiety there wanted not an intermixture of levity and folly; for that (as was generally believed) he was animated to expect the papacy, by a fatal mockery, the prediction of a ſouth-ſayer, which was, "That one ſhould ſucceed Pope "Leo, whoſe name ſhould be Adrian, an aged man of mean birth, and of great "learning and wiſdom." By which character and figure he took himſelf to be deſcribed, though it were fulfilled of Adrian the Fleming, ſon of a Dutch brewer, cardinal of Tortoſa, and preceptor unto Charles the fifth; the ſame that, not changing his chriſtian-name, was afterwards called Adrian the ſixth.

But theſe things happened in the year following, which was the fifth of this King. But in the end of the fourth year the King had called again his parliament, not, as it ſeemeth, for any particular occaſion of ſtate: but the former parliament being ended ſomewhat ſuddenly, in regard of the preparation for Britain, the King thought he had not remunerated his people ſufficiently with good laws, which evermore was his retribution for treaſure. And finding by the inſurrection in the north, there was diſcontentment abroad, in reſpect of the ſubſidy, he thought it good to give his ſubjects yet farther contentment and comfort in that kind. Certainly his times for good commonwealths laws did excel. So as he

may juſtly be celebrated for the beſt law-giver to this nation; after King Edward the firſt: for his laws (whoſo marks them well) are deep, and not vulgar; not made upon the ſpur of a particular occaſion for the preſent, but out of providence of the future, to make the eſtate of his people ſtill more and more happy; after the manner of the legiſlators in ancient and heroical times.

Firſt therefore he made a law, ſuitable to his own acts and times: for as himſelf had in his perſon and marriage made a final concord, in the great ſuit and title for the crown; ſo by this law he ſettled the like peace and quiet in the private poſſeſſions of the ſubjects: ordaining, "That fines thenceforth ſhould "be final, to conclude all ſtrangers rights;" and that upon fines levied, and ſolemnly proclaimed, the ſubject ſhould have his time of watch for five years after his title accrued; which if he forepaſſed, his right ſhould be bound for ever after; with ſome exception nevertheleſs of minors, married women, and ſuch incompetent perſons.

This ſtatute did in effect but reſtore an ancient ſtatute of the realm, which was itſelf alſo made but in affirmance of the common law. The alteration had been by a ſtatute, commonly called the ſtatute of *non-claim*, made in the time of Edward the third. And ſurely this law was a kind of prognoſtick of the good peace, which ſince his time hath (for the moſt part) continued in this kingdom until this day: for ſtatutes of *non-claim* are fit for times of war, when mens heads are troubled, that they cannot intend their eſtate; but ſtatutes, that quiet poſſeſſions, are fitteſt for times of peace, to extinguiſh ſuits and contentions, which is one of the banes of peace.

Another ſtatute was made, of ſingular policy, for the population apparently, and (if it be thoroughly conſidered) for the ſoldiery, and military forces of the realm.

Encloſures at that time began to be more frequent, whereby arable land (which could not be manured without people and families) was turned into paſture, which was eaſily rid by a few herdſmen; and tenances for years, lives, and at will (whereupon much of the yeomanry lived) were turned into demeſns. This bred a decay of people, and (by conſequence) a decay of towns, churches, tithes, and the like. The King likewiſe knew full well, and in no wiſe forgot, that there enſued withal upon this a decay and diminution of ſubſidies and taxes; for the more gentlemen, ever the lower books of ſubſidies. In remedying of this inconvenience, the King's wiſdom was admirable, and the parliament's at that time. Encloſures they would not forbid, for that had been to forbid the improvement of the patrimony of the kingdom; nor tillage they would not compel, for that was to ſtrive with nature and utility: but they took a courſe to take away depopulating encloſures, and depopulating paſturage, and yet not by that name, or by any imperious expreſs prohibition, but by conſequence. The ordinance was, "That all houſes of huſbandry, that were uſed with twenty "acres of ground and upwards, ſhould be maintained and kept up for ever; "together with a competent proportion of land to be uſed and occupied with "them;" and in no wiſe to be ſevered from them, as by another ſtatute, made afterwards in his ſucceſſor's time, was more fully declared: this upon forfeiture to be taken, not by way of popular action, but by ſeizure of the land itſelf, by the King and lords of the fee, as to half the profits, till the houſes and lands were reſtored. By this means the houſes being kept up, did of neceſſity enforce a dweller; and the proportion of land for occupation being kept up, did of neceſſity enforce that dweller not to be a beggar or cottager, but a man of ſome ſubſtance, that might keep hinds and ſervants, and ſet the plough on going. This did wonderfully concern the might and mannerhood of the kingdom, to have farms as it were of a ſtandard, ſufficient to maintain an able body out of penury, and did in effect amortize a great part of the lands of the kingdom unto the hold and occupation of the yeomanry or middle people, of a condition between gentlemen and cottagers or peaſants. Now, how much this did advance the military power of the kingdom, is apparent by the true principles of war, and the examples of other kingdoms. For it hath been held by the general opinion of men of beſt judgment in the wars (howſoever ſome few have varied,

and

and that it may receive ſome diſtinction of caſe) that the principal ſtrength of an army conſiſteth in the infantry or foot. And to make good infantry, it requireth men bred, not in a ſervile or indigent faſhion, but in ſome free and plentiful manner. Therefore if a ſtate run moſt to noblemen and gentlemen, and that the huſbandmen and ploughmen be but as their workfolks and labourers, or elſe mere cottagers (which are but houſed beggars) you may have a good cavalry, but never good ſtable bands of foot; like to coppice woods, that if you leave in them ſtaddles too thick, they will run to buſhes and briars, and have little clean under-wood. And this is to be ſeen in France and Italy, and ſome other parts abroad, where in effect all is nobleſſe or peaſantry. I ſpeak of people out of towns, and no middle people; and therefore no good forces of foot: inſomuch as they are enforced to employ mercenary bands of Switzers, and the like, for their battalions of foot. Whereby alſo it comes to paſs, that thoſe nations have much people, and few ſoldiers. Whereas the King ſaw, that contrariwiſe it would follow, that England, though much leſs in territory, yet ſhould have infinitely more ſoldiers of their native forces, than thoſe other nations have. Thus did the King ſecretly ſow Hydra's teeth; whereupon (according to the poet's fiction) ſhould riſe up armed men for the ſervice of this kingdom.

The King alſo (having care to make his realm potent, as well by ſea as by land) for the better maintenance of the navy, ordained; "That wines and "woads from the parts of Gaſcoign and Languedoc, ſhould not be brought but "in Engliſh bottoms;" bowing the ancient policy of this eſtate, from conſideration of plenty, to conſideration of power. For that almoſt all the ancient ſtatutes incite by all means merchant-ſtrangers, to bring in all ſorts of commodities; having for end cheapneſs, and not looking to the point of ſtate concerning the naval power.

The King alſo made a ſtatute in that parliament, monitory and minatory, towards juſtices of peace, that they ſhould duly execute their office, inviting complaints againſt them, firſt to their fellow-juſtices, then to the juſtices of aſſize, then to the King or Chancellor; and that a proclamation which he had publiſhed of that tenor, ſhould be read in open ſeſſions four times a year, to keep them awake. Meaning alſo to have his laws executed, and thereby to reap either obedience or forfeitures (wherein towards his latter times he did decline too much to the left hand) he did ordain remedy againſt the practice that was grown in uſe, to ſtop and damp informations upon penal laws, by procuring informations by colluſion to be put in by the confederates of the delinquents, to be faintly proſecuted, and let fall at pleaſure; and pleading them in bar of the informations, which were proſecuted with effect.

He made alſo laws for the correction of the mint, and counterfeiting of foreign coin current. And that no payment in gold ſhould be made to any merchant-ſtranger, the better to keep treaſure within the realm, for that gold was the metal that lay in the leaſt room.

He made alſo ſtatutes for the maintenance of drapery, and the keeping of wools within the realm; and not only ſo, but for ſtinting and limiting the prices of cloth, one for the finer, and another for the coarſer ſort. Which I note, both becauſe it was a rare thing to ſet prices by ſtatute, eſpecially upon our home commodities; and becauſe of the wiſe model of this act, not preſcribing prices, but ſtinting them not to exceed a rate; that the clothier might drape accordingly as he might afford.

Divers other good ſtatutes were made that parliament, but theſe were the principal. And here I do deſire thoſe into whoſe hands this work ſhall fall, that they do take in good part my long inſiſting upon the laws that were made in this King's reign. Whereof I have theſe reaſons; both becauſe it was the preheminent virtue and merit of this King, to whoſe memory I do honour; and becauſe it hath ſome correſpondence to my perſon; but chiefly, becauſe (in my judgment) it is ſome defect even in the beſt writers of hiſtory, that they do not often enough ſummarily deliver and ſet down the moſt memorable laws that paſſed in the times whereof they writ, being indeed the principal acts of peace. For though they may be had in original books of law themſelves; yet

that

that informeth not the judgment of Kings and counſellors, and perſons of eſtate, ſo well as to ſee them deſcribed, and entered in the table and pourtrait of the times.

About the ſame time, the King had a loan from the city of four thouſand pounds; which was double to that they lent before, and was duly and orderly paid back at the day, as the former likewiſe had been: the King ever chuſing rather to borrow too ſoon, than to pay too late, and ſo keeping up his credit.

Neither had the King yet caſt off his cares and hopes touching Britain, but thought to maſter the occaſion by policy, though his arms had been unfortunate; and to bereave the French King of the fruit of his victory. The ſum of his deſign was, to encourage Maximilian to go on with his ſuit, for the marriage of Anne, the heir of Britain, and to aid him to the conſummation thereof. But the affairs of Maximilian were at that time in great trouble and combuſtion, by a rebellion of his ſubjects in Flanders; eſpecially thoſe of Bruges and Gaunt, whereof the town of Bruges (at ſuch time at Maximilian was there in perſon) had ſuddenly armed in tumult, and ſlain ſome of his principal officers, and taken himſelf priſoner, and held him in durance, till they had enforced him and ſome of his counſellors, to take a ſolemn oath to pardon all their offences, and never to queſtion and revenge the ſame in time to come. Nevertheleſs Frederick the emperor would not ſuffer this reproach and indignity offered to his ſon, to paſs, but made ſharp wars upon Flanders, to reclaim and chaſtiſe the rebels. But the lord Ravenſtein, a principal perſon about Maximilian, and one that had taken the oath of abolition with his maſter, pretending the religion thereof, but indeed upon private ambition, and (as it was thought) inſtigated and corrupted from France, forſook the emperor and Maximilian his lord, and made himſelf an head of the popular party, and ſeized upon the towns of Ipres and Sluice, with both the caſtles: and forthwith ſent to the lord Cordes, governor of Picardy under the French King, to deſire aid; and to move him, that he, on the behalf of the French King, would be protector of the united towns, and by force of arms reduce the reſt. The lord Cordes was ready to embrace the occaſion, which was partly of his own ſetting, and ſent forthwith greater forces, than it had been poſſible for him to raiſe on the ſudden, if he had not looked for ſuch a ſummons before, in aid of the lord Ravenſtein and the Flemings, with inſtructions to inveſt the towns between France and Bruges. The French forces beſieged a little town called Dixmude, where part of the Flemiſh forces joined with them. While they lay at this ſiege, the King of England, upon pretence of the ſafety of the Engliſh pale about Calais, but in truth being loth that Maximilian ſhould become contemptible, and thereby be ſhaken off by the ſtates of Britain about this marriage, ſent over the lord Morley with a thouſand men, unto the lord D'Aubigny, then deputy of Calais, with ſecret inſtructions to aid Maximilian, and to raiſe the ſiege of Dixmude. The lord D'Aubigny (giving it out that all was for the ſtrengthening of the Engliſh marches) drew out of the garriſons of Calais, Hammes and Guines, to the number of a thouſand men more. So that with the freſh ſuccours that came under the conduct of the lord Morley, they made up to the number of two thouſand, or better. Which forces joining with ſome companies of Almains, put themſelves into Dixmude, not perceived by the enemies; and paſſing through the town with ſome reinforcement (from the forces that were in the town) aſſailed the enemies camp negligently guarded, as being out of fear; where there was a bloody fight, in which the Engliſh and their partakers obtained the victory, and ſlew to the number of eight thouſand men, with the loſs on the Engliſh part of a hundred or thereabouts; amongſt whom was the lord Morley. They took alſo their great ordnance, with much rich ſpoils, which they carried to Newport; whence the lord D'Aubigny returned to Calais, leaving the hurt men and ſome other voluntaries in Newport. But the lord Cordes being at Ipres with a great power of men, thinking to recover the loſs and diſgrace of the fight at Dixmude, came preſently on, and ſat down before Newport, and beſieged it; and after ſome days ſiege, he reſolved to try the fortune of an aſſault. Which he did one day, and ſucceeded therein ſo far, that he had taken the principal tower and fort in that city,

city, and planted upon it the French banner. Whence nevertheleſs they were preſently beaten forth by the Engliſh, by the help of ſome freſh ſuccours of archers, arriving by good fortune (at the inſtant) in the haven of Newport. Whereupon the lord Cordes, diſcouraged, and meaſuring the new ſuccours (which were ſmall) by the ſucceſs (which was great) levied his ſiege. By this means matters grew more exaſperate between the two Kings of England and France, for that, in the war of Flanders, the auxiliary forces of French and Engliſh were much blooded one againſt another. Which blood rankled the more, by the vain words of the lord Cordes, that declared himſelf an open enemy of the Engliſh, beyond that that appertained to the preſent ſervice; making it a common by-word of his, "That he could be content to lie in hell ſeven years, ſo "he might win Calais from the Engliſh."

The King having thus upheld the reputation of Maximilian, adviſed him now to preſs on his marriage with Britain to a concluſion. Which Maximilian accordingly did, and ſo far forth prevailed, both with the young lady, and with the principal perſons about her, as the marriage was conſummated by proxy, with a ceremony at that time in theſe parts new. For ſhe was not only publickly contracted, but ſtated as a bride, and ſolemnly bedded; and after ſhe was laid, there came in Maximilian's ambaſſador with letters of procuration, and in the preſence of ſundry noble perſonages, men and women, put his leg (ſtript naked to the knee) between the eſpouſal ſheets; to the end, that that ceremony might be thought to amount to a conſummation and actual knowledge. This done, Maximilian (whoſe property was to leave things then when they were almoſt come to perfection, and to end them by imagination; like ill archers, that draw not their arrows up to the head; and who might as eaſily have bedded the lady himſelf, as to have made a play and diſguiſe of it) thinking now all aſſured, neglected for a time his further proceeding, and intended his wars. Mean while the French King (conſulting with his divines, and finding that this pretended conſummation was rather an invention of court, than any ways valid by the laws of the church) went more really to work, and by ſecret inſtruments and cunning agents, as well matrons about the young lady as counſellors, firſt ſought to remove the point of religion and honour out of the mind of the lady herſelf, wherein there was a double labour. For Maximilian was not only contracted unto the lady, but Maximilian's daughter was likewiſe contracted to King Charles. So as the marriage halted upon both feet, and was not clear on either ſide. But for the contract with King Charles, the exception lay plain and fair; for that Maximilian's daughter was under years of conſent, and ſo not bound by law, but a power of diſagreement left to either part. But for the contract made by Maximilian with the lady herſelf, they were harder driven: having nothing to alledge, but that it was done without the conſent of her ſovereign lord King Charles, whoſe ward and client ſhe was, and he to her in place of a father; and therefore it was void and of no force for want of ſuch conſent. Which defect (they ſaid) though it would not evacuate a marriage after cohabitation, and actual conſummation; yet it was enough to make void a contract. For as for the pretended conſummation, they made ſport with it, and ſaid: "That it was "an argument that Maximilian was a widower, and a cold woer, that could "content himſelf to be a bridegroom by deputy, and would not make a little "journey to put all out of queſtion." So that the young lady, wrought upon by theſe reaſons, finely inſtilled by ſuch as the French King (who ſpared for no rewards or promiſes) had made on his ſide; and allured likewiſe by the preſent glory and greatneſs of King Charles (being alſo a young King and a batchelor) and loth to make her country the ſeat of a long and miſerable war; ſecretly yielded to accept of King Charles. But during this ſecret treaty with the lady, the better to ſave it from blaſts of oppoſition and interruption, King Charles reſorting to his wonted arts, and thinking to carry the marriage as he had carried the wars, by entertaining the King of England in vain belief, ſent a ſolemn ambaſſage by Francis lord of Luxemburgh, Charles Marignian, and Robert Gagvien, general of the order of the *bons-hommes* of the Trinity, to treat a peace and league with the King; accoupling it with an article in the nature of a requeſt,

that the French King might with the King's good will (according unto his right of ſeigniory and tutelage) diſpoſe of the marriage of the young dutcheſs of Britain, as he ſhould think good; offering by a judicial proceeding to make void the marriage of Maximilian by proxy. Alſo all this while, the better to amuſe the world, he did continue in his court and cuſtody the daughter of Maximilian, who formerly had been ſent unto him, to be bred and educated in France; not diſmiſſing or renvoying her, but contrariwiſe profeſſing and giving out ſtrongly, that he meant to proceed with that match. And that for the dutcheſs of Britain, he deſired only to preſerve his right of ſeigniory, and to give her in marriage to ſome ſuch ally as might depend upon him.

When the three commiſſioners came to the court of England, they delivered their ambaſſage unto the King, who remitted them to his council; where ſome days after they had audience, and made their propoſition by the prior of the Trinity (who though he were third in place, yet was held the beſt ſpeaker of them) to this effect.

"MY lords, the King our maſter, the greateſt and mightieſt King that "reigned in France ſince Charles the Great (whoſe name he beareth) hath "nevertheleſs thought it no diſparagement to his greatneſs at this time to pro- "pound a peace; yea, and to pray a peace with the King of England. For "which purpoſe he hath ſent us his commiſſioners, inſtructed and enabled with "full and ample power to treat and conclude; giving us further in charge, to open "in ſome other buſineſs the ſecrets of his own intentions. Theſe be indeed the "precious love tokens between great Kings, to communicate one with another "the true ſtate of their affairs, and to paſs by nice points of honour, which ought "not to give law unto affection. This I do aſſure your lordſhips; it is not poſ- "ſible for you to imagine the true and cordial love that the King our maſter "beareth to your ſovereign, except you were near him as we are. He uſeth "his name with ſo great reſpect; he remembereth their firſt acquaintance at "Paris with ſo great contentment; nay, he never ſpeaks of him, but that pre- "ſently he falls into diſcourſe of the miſeries of great Kings, in that they cannot "converſe with their equals, but with ſervants. This affection to your King's "perſon and virtues God hath put into the heart of our maſter, no doubt for "the good of Chriſtendom, and for purpoſes yet unknown to us all. For other "root it cannot have, ſince it was the ſame to the earl of Richmond, that it is "now to the King of England. This is therefore the firſt motive that makes "our King to deſire peace and league with your ſovereign: good affection, "and ſomewhat that he finds in his own heart. This affection is alſo armed "with reaſon of eſtate. For our King doth in all candour and frankneſs of "dealing open himſelf unto you; that having an honourable, yea, and an holy "purpoſe, to make a voyage and war in remote parts, he conſidereth that it "will be of no ſmall effect, in point of reputation to his enterprize, if it be "known abroad that he is in good peace with all his neighbour Princes, and "eſpecially with the King of England, whom for good cauſes he eſteemeth moſt.

"But now (my lords) give me leave to uſe a few words to remove all ſcruples "and miſunderſtandings, between your ſovereign and ours, concerning ſome late "actions; which if they be not cleared, may perhaps hinder this peace. To "the end, that for matters paſt neither King may conceive unkindneſs of other, "nor think the other conceiveth unkindneſs of him. The late actions are two; "that of Britain, and that of Flanders. In both which it is true, that the ſubjects "ſwords of both Kings have encountered and ſtricken, and the ways and inclinations "alſo of the two Kings, in reſpect of their confederates and allies, have ſevered.

"For that of Britain, the King your ſovereign knoweth beſt what hath paſſed. "It was a war of neceſſity on our maſter's part. And though the motives of "it were ſharp and picquant as could be, yet did he make that war rather with "an olive-branch, than a laurel-branch in his hand, more deſiring peace than "victory. Beſides, from time to time he ſent (as it were) blank papers to your "King, to write the conditions of peace. For though both his honour and "ſafety went upon it, yet he thought neither of them too precious to put into "the King of England's hands. Neither doth our King on the other ſide make

"any

"any unfriendly interpretation of your King's ſending of ſuccours to the duke of "Britain; for the King knoweth well, that many things muſt be done of Kings "for ſatisfaction of their people; and it is not hard to diſcern what is a King's own. "But this matter of Britain is now (by the act of God) ended and paſſed; and (as "the King hopeth) like the way of a ſhip in the ſea, without leaving any impreſ- "ſion in either of the Kings minds: as he is ſure for his part it hath not done in his.

"For the action of Flanders: as the former of Britain was a war of neceſſity, "ſo this was a war of juſtice; which with a good King is of equal neceſſity "with danger of eſtate, for elſe he ſhould leave to be a King. The ſubjects "of Burgundy are ſubjects in chief to the crown of France, and their duke the "homager and vaſſal of France. They had wont to be good ſubjects, howſo- "ever Maximilian hath of late diſtempered them. They fled to the King for "juſtice and deliverance from oppreſſion. Juſtice he could not deny; purchaſe "he did not ſeek. This was good for Maximilian, if he could have ſeen it in "people mutinied, to arreſt fury, and prevent deſpair. My lords, it may be "this I have ſaid is needleſs, ſave that the King our maſter is tender in any thing, "that may but glance upon the friendſhip of England. The amity between the "two Kings (no doubt) ſtands entire and inviolate: and that their ſubjects ſwords "have claſhed, it is nothing unto the publick peace of the crowns; it being a "thing very uſual in auxiliary forces of the beſt and ſtraiteſt confederates, to "meet and draw blood in the field. Nay, many times there be aids of the ſame "nation on both ſides, and yet it is not (for all that) a kingdom divided in itſelf.

"It reſteth (my lords) that I impart unto you a matter, that I know your "lordſhips all will much rejoice to hear; as that which importeth the Chriſtian "commonweal more, than any action that hath happened of long time. The "King our maſter hath a purpoſe and determination to make war upon the "kingdom of Naples; being now in the poſſeſſion of a baſtard ſlip of Arragon, "but appertaining unto his Majeſty by clear and undoubted right; which if "he ſhould not by juſt arms ſeek to recover, he could neither acquit his honour "nor anſwer it to his people. But his noble and chriſtian thoughts reſt not "here: for his reſolution and hope is, to make the reconqueſt of Naples but "as a bridge to tranſport his forces into Grecia; and not to ſpare blood or trea- "ſure (if it were to the impawning of his crown, and diſpeopling of France) "till either he hath overthrown the empire of the Ottomans, or taken it in his "way to paradiſe. The King knoweth well, that this is a deſign that could "not ariſe in the mind of any King, that did not ſtedfaſtly look up unto God, "whoſe quarrel this is, and from whom cometh both the will and the deed.

"But yet it is agreeable to the perſon that he beareth (though unworthy) of "the thrice Chriſtian King, and the eldeſt ſon of the church. Whereunto he "is alſo invited by the example (in more ancient time) of King Henry the fourth "of England (the firſt renowned King of the houſe of Lancaſter; anceſtor, "though not progenitor to your King) who had a purpoſe towards the end of "of his time, as you know better, to make an expedition into the Holy-land; "and by the example alſo (preſent before his eyes) of that honourable and re- "ligious war which the King of Spain now maketh, and hath almoſt brought "to perfection, for the recovery of the realm of Granada from the Moors.

"And although this enterprize may ſeem vaſt and unmeaſured, for the King to "attempt that by his own forces, wherein heretofore a conjunction of moſt of "the Chriſtian Princes hath found work enough; yet his Majeſty wiſely con- "ſidereth, that ſometimes ſmaller forces being united under one command, are "more effectual in proof (though not ſo promiſing in opinion and fame) than "much greater forces, variouſly compounded by aſſociations and leagues, which "commonly in a ſhort time after their beginnings turn to diſſociations and di- "viſions. But, my lords, that which is as a voice from heaven, that calleth "the King to this enterprize, is a rent at this time in the houſe of the Ottomans.

"I do not ſay but there hath been brother againſt brother in that houſe before, "but never any that had refuge to the arms of the Chriſtians, as now hath "Gemes (brother unto Bajazet that reigneth) the far braver man of the two, "the other being between a monk and a philoſopher, and better read in the

"Alcoran

" Alcoran and Averroes, than able to wield the ſcepter of ſo warlike an empire.
" This therefore is the King our maſter's memorable and heroical reſolution
" for an holy war. And becauſe he carrieth in this the perſon of a Chriſtian
" ſoldier, as well as of a great temporal monarch, he beginneth with humility,
" and is content for this cauſe, to beg peace at the hands of other Chriſtian Kings.
" There remaineth only rather a civil requeſt, than any eſſential part of our ne-
" gotiation, which the King maketh to the King your ſovereign. The King (as
" all the world knoweth) is lord in chief of the dutchy of Britain. The marriage
" of the heir belongeth to him as guardian. This is a private patrimonial right,
" and no buſineſs of eſtate: yet nevertheleſs (to run a fair courſe with your King,
" whom he deſires to make another himſelf, and to be one and the ſame thing
" with him) his requeſt is, that with the King's favour and conſent he may diſ-
" poſe of her in marriage, as he thinketh good, and make void the intruded and
" pretended marriage of Maximilian, according to juſtice. This (my lords) is
" all that I have to ſay, deſiring your pardon for my weakneſs in the delivery."

Thus did the French ambaſſadors, with great ſhew of their King's affection, and many ſugared words, ſeek to addulce all matters between the two Kings, having two things for their ends; the one to keep the King quiet till the marriage of Britain was paſt; and this was but a ſummer fruit, which they thought was almoſt ripe, and would be ſoon gathered. The other was more laſting; and that was to put him into ſuch a temper, as he might be no diſturbance or impediment to the voyage for Italy. The lords of the council were ſilent; and ſaid only, " That they knew the ambaſſadors would look for no anſwer, till they had " reported to the King;" and ſo they roſe from council. The King could not well tell what to think of the marriage of Britain. He ſaw plainly the ambition of the French King was, to impatronize himſelf of the dutchy; but he wondered he would bring into his houſe a litigious marriage, eſpecially conſidering who was his ſucceſſor. But weighing one thing with another he gave Britain for loſt; but reſolved to make his profit of this buſineſs of Britain, as a quarrel for war; and that of Naples, as a wrench and mean for peace; being well adver-tiſed, how ſtrongly the King was bent upon that action. Having therefore con-ferred divers times with his council, and keeping himſelf ſomewhat cloſe, he gave a direction to the Chancellor, for a formal anſwer to the ambaſſadors, and that he did in the preſence of his council. And after calling the Chancellor to him apart, bade him ſpeak in ſuch language, as was fit for a treaty that was to end in a breach; and gave him alſo a ſpecial caveat, that he ſhould not uſe any words to diſcourage the voyage of Italy. Soon after the ambaſſadors were ſent for to the council, and the lord Chancellor ſpake to them in this ſort:

" MY lords ambaſſadors, I ſhall make anſwer, by the King's commandment,
" unto the eloquent declaration of you, my lord prior, in a brief and plain manner.
" The King forgetteth not his former love and acquaintance with the King your
" maſter: but of this there needeth no repetition. For if it be between them as
" it was, it is well; if there be any alteration, it is not words that will make it up.

" For the buſineſs of Britain, the King findeth it a little ſtrange, that the
" French King maketh mention of it as matter of well-deſerving at his hand:
" for that deſerving was no more, but to make him his inſtrument to ſurprize
" one of his beſt confederates. And for the marriage the King would not med-
" dle with it, if your maſter would marry by the book, and not by the ſword.

" For that of Flanders, if the ſubjects of Burgundy had appealed to your
" King as their chief lord, at firſt by way of ſupplication, it might have had a
" ſhew of juſtice: but it was a new form of proceſs, for ſubjects to impriſon their
" Prince firſt, and to ſlay his officers, and then to be complainants. The King
" ſaith, That ſure he is, when the French King and himſelf ſent to the ſubjects
" of Scotland (that had taken arms againſt their King) they both ſpake in an-
" other ſtyle, and did in princely manner ſignify their deteſtation of popular
" attentates upon the perſon or authority of Princes. But, my lords ambaſſadors,
" the King leaveth theſe two actions thus: that on the one ſide he hath not
" received any manner of ſatisfaction from you concerning them; and on the
" other, that he doth not apprehend them ſo deeply, as in reſpect of them to

" refuſe to treat of peace, if other things may go hand in hand. As for the " war of Naples, and the deſign againſt the Turk; the King hath commanded " me expreſly to ſay, that he doth wiſh with all his heart to his good brother " the French King, that his fortunes may ſucceed, according to his hopes, and " honourable intentions. And whenſoever he ſhall hear that he is prepared for " Grecia, as your maſter is pleaſed now to ſay that he beggeth a peace of " the King, ſo the King will then beg of him a part in that war.

" But now, my lords ambaſſadors, I am to propound unto you ſomewhat on " the King's part: The King your maſter hath taught our King what to ſay and " demand. You ſay (my lord prior) that your King is reſolved to recover his " right to Naples, wrongfully detained from him. And that if he ſhould not " thus do, he could not acquit his honour, nor anſwer it to his people. Think " (my lords) that the King our maſter ſaith the ſame thing over again to you " touching Normandy, Guienne, Anjou, yea, and the kingdom of France itſelf. " I cannot expreſs it better than in your own words: If therefore the French " King ſhall conſent, that the King our maſter's title to France (at leaſt tribute " for the ſame) be handled in the treaty, the King is content to go on with " the reſt, otherwiſe he refuſeth to treat."

The ambaſſadors, being ſomewhat abaſhed with this demand, anſwered in ſome heat; That they doubted not, but the King their ſovereign's ſword would be able to maintain his ſcepter: and they aſſured themſelves, he neither could nor would yield to any diminution of the crown of France, either in territory or regality: but, howſoever, they were too great matters for them to ſpeak of, having no commiſſion. It was replied, That the King looked for no other anſwer from them, but would forthwith ſend his own ambaſſadors to the French King. There was a queſtion alſo aſked at the table; whether the French King would agree to have the diſpoſing of the marriage of Britain with an exception and excluſion, that he ſhould not marry her himſelf? To which the ambaſſadors anſwered; That it was ſo far out of their King's thoughts, as they had received no inſtructions touching the ſame. Thus were the ambaſſadors diſmiſſed, all ſave the prior; and were followed immediately by Thomas earl of Ormond, and Thomas Goldenſton prior of Chriſt-Church in Canterbury, who were preſently ſent over into France. In the mean ſpace Lionel biſhop of Concordia was ſent as nuncio from Pope Alexander the ſixth to both Kings, to move a peace between them. For Pope Alexander, finding himſelf pent and locked up, by a league and aſſociation of the principal ſtates of Italy, that he could not make his way for the advancement of his own houſe (which he immoderately thirſted after) was deſirous to trouble the waters in Italy, that he might fiſh the better; caſting the net, not out of ſaint Peter's, but out of Borgia's bark. And doubting leſt the fears from England might ſtay the French King's voyage into Italy, diſpatched this biſhop, to compoſe all matters between the two Kings, if he could: who firſt repaired to the French King, and finding him well inclined (as he conceived) took on his journey towards England, and found the Engliſh ambaſſadors at Calais, on their way towards the French King. After ſome conference with them, he was in honourable manner tranſported over into England, where he had audience of the King. But notwithſtanding he had a good ominous name to have made a peace, nothing followed: for in the mean time the purpoſe of the French King to marry the dutcheſs, could be no longer diſſembled. Wherefore the Engliſh ambaſſadors (finding how things went) took their leave, and returned. And the prior alſo was warned from hence to depart out of England. Who when he turned his back (more like a pedant than an ambaſſador) diſperſed a bitter libel, in Latin verſe, againſt the King; unto which the King (though he had nothing of a pedant) yet was content to cauſe an anſwer to be made in like verſe; and that as ſpeaking in his own perſon, but in a ſtyle of ſcorn and ſport. About this time alſo was born the King's ſecond ſon Henry, who afterwards reigned. And ſoon after followed the ſolemnization of the marriage between Charles and Anne dutcheſs of Britain, with whom he received the dutchy of Britain as her dowry, the daughter of Maximilian being a little before ſent home. Which when it came to the ears of Maxi-

milian (who would never believe it till it was done, being ever the principal in deceiving himſelf, though in this the French King did very handſomly ſecond it) in tumbling it over and over in his thoughts, that he ſhould at one blow (with ſuch a double ſcorn) be defeated, both of the marriage of his daughter and his own (upon both which he had fixed high imaginations) he loſt all patience, and caſting off the reſpects fit to be continued between great Kings, even when their blood is hotteſt, and moſt riſen, fell to bitter invectives againſt the perſon and actions of the French King. And (by how much he was the leſs able to do, talking ſo much the more) ſpake all the injuries he could deviſe of Charles, ſaying; That he was the moſt perfidious man upon the earth, and that he had made a marriage compounded between an advowtry and a rape; which was done (he ſaid) by the juſt judgment of God; to the end that (the nullity thereof being ſo apparent to all the world) the race of ſo unworthy a perſon might not reign in France. And forthwith he ſent ambaſſadors as well to the King of England, as to the King of Spain, to incite them to war, and to treat a league offenſive againſt France, promiſing to concur with great forces of his own. Hereupon the King of England (going nevertheleſs his own way) called a parliament, it being the ſeventh year of his reign; and the firſt day of opening thereof (ſitting under his cloth of eſtate) ſpake himſelf unto his lords and commons, in this manner:

" MY lords, and you the commons, when I purpoſed to make a war in Bri-
" tain by my lieutenant, I made declaration thereof to you by my Chancellor.
" But now that I mean to make a war upon France in perſon, I will declare it to
" you myſelf. That war was to defend another man's right, but this is to reco-
" ver our own; and that ended by accident, but we hope this ſhall end in victory.

" The French King troubles the Chriſtian world: that which he hath is not
" his own, and yet he ſeeketh more. He hath inveſted himſelf of Britain: he
" maintaineth the rebels in Flanders: and he threateneth Italy. For ourſelves, he
" hath proceeded from diſſimulation, to neglect; and from neglect, to contumely.
" He hath aſſailed our confederates: he denieth our tribute: in a word, he ſeeks
" war: ſo did not his father, but ſought peace at our hands; and ſo perhaps will
" he, when good counſel or time ſhall make him ſee as much as his father did.

" Mean while, let us make his ambition our advantage; and let us not ſtand
" upon a few crowns of tribute, or acknowledgement, but (by the favour of
" Almighty God) try our right for the crown of France itſelf; remembering that
" there hath been a French King priſoner in England, and a King of England
" crowned in France. Our confederates are not diminiſhed. Burgundy is in a
" mightier hand than ever, and never more provoked. Britain cannot help us,
" but it may hurt them. New acqueſts are more burthen than ſtrength. The
" malecontents of his own kingdom have not been baſe, popular, nor titulary
" impoſtors, but of an higher nature. The King of Spain (doubt ye not) will
" join with us, not knowing where the French King's ambition will ſtay. Our
" holy father the Pope likes no Tramontanes in Italy. But howſoever it be, this
" matter of confederates is rather to be thought on, than reckoned on. For God
" forbid but England ſhould be able to get reaſon of France without a ſecond.

" At the battles of Creſſy, Poictiers, Agencourt, we were of ourſelves. France
" hath much people, and few ſoldiers. They have no ſtable bands of foot.
" Some good horſe they have; but thoſe are forces which are leaſt fit for a
" defenſive war, where the actions are in the aſſailant's choice. It was our diſ-
" cords only that loſt France; and (by the power of God) it is the good peace
" which we now enjoy, that will recover it. God hath hitherto bleſſed my ſword.
" I have, in this time that I have reigned, weeded out my bad ſubjects, and tried
" my good. My people and I know one another, which breeds confidence:
" and if there ſhould be any bad blood left in the kingdom, an honourable fo-
" reign war will vent it, or purify it. In this great buſineſs, let me have your
" advice and aid. If any of you were to make his ſon knight, you might have
" aid of your tenants by law. This concerns the knighthood and ſpurs of the
" kingdom, whereof I am father; and bound not only to ſeek to maintain it,
" but to advance it: but for matter of treaſure, let it not be taken from the
" pooreſt

" pooreſt ſort, but from thoſe to whom the benefit of the war may redound. " France is no wilderneſs; and I, that profeſs good huſbandry, hope to make " the war (after the beginnings) to pay itſelf. Go together in God's name, and " loſe no time; for I have called this parliament wholly for this cauſe."

Thus ſpake the King; but for all this, though he ſhewed great forwardneſs for a war, not only to his parliament and court, but to his privy council likewiſe (except the two biſhops and a few more) yet nevertheleſs in his ſecret intentions he had no purpoſe to go through with any war upon France. But the truth was, that he did but traffick with that war, to make his return in money. He knew well, that France was now entire and at unity with itſelf, and never ſo mighty many years before. He ſaw by the taſte that he had of his forces ſent into Britain, that the French knew well enough how to make war with the Engliſh, by not putting things to the hazard of a battle, but wearing them by long ſieges of towns, and ſtrong fortified encampings. James the third of Scotland (his true friend and confederate) gone; and James the fourth (that had ſucceeded) wholly at the devotion of France, and ill affected towards him. As for the conjunctions of Ferdinando of Spain, and Maximilian, he could make no foundation upon them. For the one had power, and not will; and the other had will, and not power. Beſides that, Ferdinando had but newly taken breath from the war with the Moors; and merchanded at this time with France for the reſtoring of the counties of Ruſſignon and Perpignian, oppignorated to the French. Neither was he out of fear of the diſcontents and ill blood within the realm; which having uſed always to repreſs and appeaſe in perſon, he was loth they ſhould find him at a diſtance beyond ſea, and engaged in war. Finding therefore the inconveniencies and difficulties in the proſecution of a war, he caſt with himſelf how to compaſs two things. The one, how by the declaration and inchoation of a war to make his profit. The other, how to come off from the war with ſaving of his honour. For profit, it was to be made two ways; upon his ſubjects for the war, and upon his enemies for the peace; like a good merchant, that maketh his gain both upon the commodities exported, and imported back again. For the point of honour, wherein he might ſuffer for giving over the war; he conſidered well, that as he could not truſt upon the aids of Ferdinando and Maximilian for ſupports of war; ſo the impuiſſance of the one, and the double proceeding of the other, lay fair for him for occaſions to accept of peace. Theſe things he did wiſely foreſee, and did as artificially conduct, whereby all things fell into his lap as he deſired.

For as for the parliament, it preſently took fire, being affectionate (of old) to the war of France; and deſirous afreſh to repair the diſhonour they thought the King ſuſtained by the loſs of Britain. Therefore they adviſed the King (with great alacrity) to undertake the war of France. And although the parliament conſiſted of the firſt and ſecond nobility (together with principal citizens and townſmen) yet worthily and juſtly reſpecting more the people (whoſe deputies they were) than their own private perſons, and finding by the lord Chancellor's ſpeech the King's inclination that way; they conſented that commiſſioners ſhould go forth for the gathering and levying of a benevolence from the more able ſort. This tax (called a benevolence) was deviſed by Edward the fourth, for which he ſuſtained much envy. It was aboliſhed by Richard the third by act of parliament, to ingratiate himſelf with the people; and it was now revived by the King, but with conſent of parliament, for ſo it was not in the time of King Edward the fourth. But by this way he raiſed exceeding great ſums. Inſomuch as the city of London (in thoſe days) contributed nine thouſand pounds and better; and that chiefly levied upon the wealthier ſort. There is a tradition of a *dilemma*, that biſhop Morton the Chancellor uſed, to raiſe up the benevolence to higher rates; and ſome called it his fork, and ſome his crotch. For he had couched an article in the inſtructions to the commiſſioners who were to levy the benevolence; " That if they met with any that were ſparing, they ſhould " tell them, that they muſt needs have, becauſe they laid up; and if they were " ſpenders, they muſt needs have, becauſe it was ſeen in their port and manner " of living." So neither kind came amiſs.

This

This parliament was merely a parliament of war; for it was in ſubſtance but a declaration of war againſt France and Scotland, with ſome ſtatutes conducing thereunto: as, the ſevere puniſhing of mort-pays and keeping back of ſoldiers wages in captains; the like ſeverity for the departure of ſoldiers without licence; ſtrengthening of the common law in favour of protections for thoſe that were in the King's ſervice; and the ſetting the gate open and wide for men to ſell or mortgage their lands, without fines for alienation, to furniſh themſelves with money for the war; and laſtly, the voiding of all Scottiſh men out of England. There was alſo a ſtatute for the diſperſing of the ſtandard of the exchequer throughout England; thereby to ſize weights and meaſures; and two or three more of leſs importance.

After the parliament was broken up (which laſted not long) the King went on with his preparations for the war of France; yet neglected not in the mean time the affairs of Maximilian for the quieting of Flanders, and reſtoring him to his authority amongſt his ſubjects. For at that time the lord of Ravenſtein, being not only a ſubject rebelled, but a ſervant revolted (and ſo much the more malicious and violent, by the aid of Bruges and Gaunt) had taken the town and both the caſtles of Sluice; as we ſaid before: and having (by the commodity of the haven) gotten together certain ſhips and barks, fell to a kind of piratical trade; robbing and ſpoiling, and taking priſoners the ſhips and veſſels of all nations, that paſſed along that coaſt towards the mart of Antwerp, or into any part of Brabant, Zealand, or Friezeland; being ever well victualled from Picardie, beſides the commodity of victuals from Sluice, and the country adjacent, and the avails of his own prizes. The French aſſiſted him ſtill under-hand; and he likewiſe (as all men do that have been of both ſides) thought himſelf not ſafe, except he depended upon a third perſon.

There was a ſmall town ſome two miles from Bruges towards the ſea, called Dam; which was a fort and approach to Bruges; and had a relation alſo to Sluice. This town the King of the Romans had attempted often (not for any worth of the town in itſelf, but becauſe it might choak Bruges, and cut it off from the ſea) and ever failed. But therewith the duke of Saxony came down into Flanders, taking upon him the perſon of an umpire, to compoſe things between Maximilian and his ſubjects; but being (indeed) faſt and aſſured to Maximilian. Upon this pretext of neutrality and treaty, he repaired to Bruges; deſiring of the ſtates of Bruges, to enter peaceably into their town, with a retinue of ſome number of men of arms fit for his eſtate; being ſomewhat the more (as he ſaid) the better to guard him in a country that was up in arms: and bearing them in hand, that he was to communicate with them of divers matters of great importance for their good. Which having obtained of them, he ſent his carriages and harbingers before him, to provide his lodging. So that his men of war entered the city in good array, but in peaceable manner, and he followed. They that went before enquired ſtill for inns and lodgings, as if they would have reſted there all night; and ſo went on till they came to the gate that leadeth directly towards Dam; and they of Bruges only gazed upon them, and gave them paſſage. The captains and inhabitants of Dam alſo ſuſpected no harm from any that paſſed through Bruges; and diſcovering forces afar off, ſuppoſed they had been ſome ſuccours that were come from their friends, knowing ſome dangers towards them. And ſo perceiving nothing but well till it was too late, ſuffered them to enter their town. By which kind of ſleight, rather than ſtratagem, the town of Dam was taken, and the town of Bruges ſhrewdly blocked up, whereby they took great diſcouragement.

The duke of Saxony, having won the town of Dam, ſent immediately to the King to let him know, that it was Sluice chiefly, and the lord Ravenſtein, that kept the rebellion of Flanders in life: and that if it pleaſed the King to beſiege it by ſea, he alſo would beſiege it by land, and ſo cut out the core of thoſe wars.

The King, willing to uphold the authority of Maximilian (the better to hold France in awe) and being likewiſe ſued unto by his merchants, for that the ſeas were much infeſted by the barks of the lord Ravenſtein; ſent ſtraightways Sir Edward Poynings, a valiant man, and of good ſervice, with twelve ſhips, well furniſhed

furniſhed with ſoldiers and artillery, to clear the ſeas, and to beſiege Sluice on that part. The Engliſhmen did not only coop up the lord Ravenſtein, that he ſtirred not, and likewiſe hold in ſtrait ſiege the maritime part of the town; but alſo aſſailed one of the caſtles, and renewed the aſſault ſo for twenty days ſpace (iſſuing ſtill out of their ſhips at the ebb) as they made great ſlaughter of them of the caſtle; who continually fought with them to repulſe them, though of the Engliſh part alſo were ſlain a brother of the earl of Oxford's, and ſome fifty more.

But the ſiege ſtill continuing more and more ſtrait, and both the caſtles (which were the principal ſtrength of the town) being diſtreſſed, the one by the duke of Saxony, and the other by the Engliſh; and a bridge of boats, which the lord Ravenſtein had made between both caſtles, whereby ſuccours and relief might paſs from the one to the other, being on a night ſet on fire by the Engliſh; he deſpairing to hold the town, yielded (at the laſt) the caſtles to the Engliſh, and the town to the duke of Saxony, by compoſition. Which done, the duke of Saxony and Sir Edward Poynings treated with them of Bruges, to ſubmit themſelves to Maximilian their lord; which after ſome time they did, paying (in ſome good part) the charge of the war, whereby the Almains and foreign ſuccours were diſmiſſed. The example of Bruges other of the revolted towns followed; ſo that Maximilian grew to be out of danger, but (as his manner was to handle matters) never out of neceſſity. And Sir Edward Poynings (after he had continued at Sluice ſome good while till all things were ſettled) returned unto the King, being then before Bouloign.

Somewhat about this time came letters from Ferdinando and Iſabella, King and Queen of Spain; ſignifying the final conqueſt of Granada from the Moors; which action, in itſelf ſo worthy, King Ferdinando (whoſe manner was never to loſe any virtue for the ſhewing) had expreſſed and diſplayed in his letters at large, with all the particularities and religious puncto's and ceremonies, that were obſerved in the reception of that city and kingdom: ſhewing amongſt other things, that the King would not by any means in perſon enter the city, until he had firſt aloof ſeen the croſs ſet up upon the greater tower of Granada, whereby it became Chriſtian ground. That likewiſe, before he would enter, he did homage to God above, pronouncing by an herald from the height of that tower, that he did acknowledge to have recovered that kingdom by the help of God Almighty, and the glorious Virgin, and the virtuous Apoſtle ſaint James, and the holy father Innocent the eighth, together with the aids and ſervices of his prelates, nobles, and commons. That yet he ſtirred not from his camp, till he had ſeen a little army of martyrs, to the number of ſeven hundred and more Chriſtians (that had lived in bonds and ſervitude, as ſlaves to the Moors) paſs before his eyes, ſinging a pſalm for their redemption; and that he had given tribute unto God, by alms and relief extended to them all, for his admiſſion into the city. Theſe things were in the letters, with many more ceremonies of a kind of holy oſtentation.

The King, ever willing to put himſelf into the conſort or quire of all religious actions, and naturally affecting much the King of Spain (as far as one King can affect another) partly for his virtues, and partly for a counterpoiſe to France; upon the receipt of theſe letters, ſent all his nobles and prelates that were about the court, together with the mayor and aldermen of London, in great ſolemnity to the church of Paul; there to hear a declaration from the lord Chancellor, now cardinal. When they were aſſembled, the cardinal, ſtanding upon the uppermoſt ſtep, or half-pace, before the quire, and all the nobles, prelates, and governors of the city at the foot of the ſtairs, made a ſpeech to them; letting them know, that they were aſſembled in that conſecrate place, to ſing unto God a new ſong. For that (ſaid he) theſe many years the Chriſtians have not gained new ground or territory upon the Infidels, nor enlarged and ſet farther the bounds of the Chriſtian world. But this is now done by the proweſs and devotion of Ferdinando and Iſabella, Kings of Spain; who have (to their immortal honour) recovered the great and rich kingdom of Granada, and the populous and mighty city of the ſame name, from the Moors, having been in poſſeſſion thereof by the ſpace of ſeven hundred years and more: for which,

this aſſemby and all Chriſtians are to render laud and thanks unto God, and to celebrate this noble act of the King of Spain; who in this is not only victorious, but apoſtolical, in the gaining of new provinces to the Chriſtian faith. And the rather, for that this victory and conqueſt is obtained without much effuſion of blood. Whereby it is to be hoped, that there ſhall be gained not only new territory, but infinite ſouls to the church of Chriſt, whom the Almighty (as it ſeems) would have live to be converted. Herewithal he did relate ſome of the moſt memorable particulars of the war and victory. And after his ſpeech ended, the whole aſſembly went ſolemnly in proceſſion, and *Te Deum* was ſung.

Immediately after the ſolemnity, the King kept his May day at his palace of Shene, now Richmond. Where, to warm the blood of his nobility and gallants againſt the war, he kept great triumphs of juſting and tourney, during all that month. In which ſpace it ſo fell out, that Sir James Parker, and Hugh Vaughan (one of the King's gentlemen uſhers) having had a controverſy touching certain arms that the king at arms had given Vaughan, were appointed to run ſome courſes one againſt another. And by accident of a faulty helmet that Parker had on, he was ſtricken into the mouth at the firſt courſe, ſo that his tongue was born unto the hinder part of his head, in ſuch ſort, that he died preſently upon the place. Which, becauſe of the controverſy precedent, and the death that followed, was accounted amongſt the vulgar as a combat or trial of right. The King towards the end of this ſummer, having put his forces, wherewith he meant to invade France, in readineſs (but ſo as they were not yet met or muſtered together) ſent Urſwick (now made his almoner) and Sir John Riſley, to Maximilian, to let him know that he was in arms, ready to paſs the ſeas into France, and did but expect to hear from him, when and where he did appoint to join with him, according to his promiſe made unto him by Countebalt his ambaſſador.

The Engliſh ambaſſadors having repaired to Maximilian, did find his power and promiſe at a very great diſtance; he being utterly unprovided of men, money, and arms, for any ſuch enterprize. For Maximilian, having neither wing to fly on, for that his patrimony of Auſtria was not in his hands (his father being then living) and on the other ſide, his matrimonial territories of Flanders being partly in dowry to his mother-in-law, and partly not ſerviceable, in reſpect of the late rebellions; was thereby deſtitute of means to enter into war. The ambaſſadors ſaw this well, but wiſely thought fit to advertiſe the King thereof, rather than to return themſelves, till the King's farther pleaſure were known; the rather, for that Maximilian himſelf ſpake as great as ever he did before, and entertained them with dilatory anſwers: ſo as the formal part of their ambaſſage might well warrant and require their farther ſtay. The King hereupon (who doubted as much before, and ſaw through his buſineſs from the beginning) wrote back to the ambaſſadors, commending their diſcretion in not returning, and willing them to keep the ſtate wherein they found Maximilian as a ſecret, till they heard farther from him: and mean while went on with his voyage royal for France, ſuppreſſing for a time this advertiſement touching Maximilian's poverty and diſability.

By this time was drawn together a great and puiſſant army into the city of London; in which were Thomas marquis Dorſet, Thomas earl of Arundel, Thomas earl of Derby, George earl of Shrewſbury, Edmond earl of Suffolk, Edward earl of Devonſhire, George earl of Kent, the earl of Eſſex, Thomas earl of Ormond, with a great number of barons, knights, and principal gentlemen; and amongſt them Richard Thomas, much noted for the brave troops that he brought out of Wales. The army riſing in the whole to the number of five and twenty thouſand foot, and ſixteen hundred horſe; over which the King (conſtant in his accuſtomed truſt and employment) made Jaſper duke of Bedford, and John earl of Oxford, generals under his own perſon. The ninth of September, in the eighth year of his reign, he departed from Greenwich towards the ſea; all men wondering that he took that ſeaſon (being ſo near winter) to begin the war; and ſome thereupon gathering, it was a ſign that the

the war would not be long. Nevertheleſs the King gave out the contrary, thus; "That he intending not to make a ſummer buſineſs of it, but a reſolute war "(without term prefixed) until he had recovered France; it ſkilled not much "when he began it, eſpecially having Calais at his back, where he might "winter, if the reaſon of the war ſo required." The ſixth of October he embarked at Sandwich; and the ſame day took land at Calais, which was the rendezvous, where all his forces were aſſigned to meet. But in this his journey towards the ſea-ſide (wherein, for the cauſe that we ſhall now ſpeak of, he hovered ſo much the longer) he had received letters from the lord Cordes, who the hotter he was againſt the Engliſh in time of war, had the more credit in a negociation of peace; and beſides was held a man open and of good faith. In which letters there was made an overture of peace from the French King, with ſuch conditions as were ſomewhat to the King's taſte; but this was carried at the firſt with wonderful ſecrecy. The King was no ſooner come to Calais, but the calm winds of peace began to blow. For firſt, the Engliſh ambaſſadors returned out of Flanders from Maximilian, and certified the King, that he was not to hope for any aid from Maximilian, for that he was altogether unprovided. His will was good, but he lacked money. And this was made known and ſpread through the army. And although the Engliſh were therewithal nothing diſmayed, and that it be the manner of ſoldiers, upon bad news to ſpeak the more bravely; yet nevertheleſs it was a kind of preparative to a peace. Inſtantly in the neck of this (as the King had laid it) came news, that Ferdinando and Iſabella, Kings of Spain, had concluded a peace with King Charles; and that Charles had reſtored unto them the counties of Ruſſignon and Perpignian, which formerly were mortgaged by John King of Arragon (Ferdinando's father) unto France, for three hundred thouſand crowns; which debt was alſo upon this peace by Charles clearly releaſed. This came alſo handſomely to put on the peace; both becauſe ſo potent a confederate was fallen off, and becauſe it was a fair example of a peace bought; ſo as the King ſhould not be the ſole merchant in this peace. Upon theſe airs of peace, the King was content that the biſhop of Exeter, and the lord D'Aubigny (governor of Calais) ſhould give a meeting unto the lord Cordes, for the treaty of a peace. But himſelf nevertheleſs and his army, the fifteenth of October, removed from Calais, and in four days march ſate him down before Boloign.

During this ſiege of Boloign (which continued near a month) there paſſed no memorable action, nor accident of war; only Sir John Savage, a valiant captain, was ſlain, riding about the walls of the town, to take a view. The town was both well fortified, and well manned; yet it was diſtreſſed, and ready for an aſſault. Which if it had been given (as was thought) would have coſt much blood; but yet the town would have been carried in the end. Mean while a peace was concluded by the commiſſioners, to continue for both the Kings lives. Where there was no article of importance; being in effect rather a bargain than a treaty. For all things remained as they were, ſave that there ſhould be paid to the King ſeven hundred forty five thouſand duckets in preſent, for his charges in that journey; and five and twenty thouſand crowns yearly, for his charges ſuſtained in the aids of the Britons. For which annual, though he had Maximilian bound before for thoſe charges; yet he counted the alteration of the hand, as much as the principal debt. And beſides, it was left ſomewhat indefinitely when it ſhould determine or expire; which made the Engliſh eſteem it as a tribute carried under fair terms. And the truth is, it was paid both to the King, and to his ſon King Henry the eighth, longer than it could continue upon any computation of charges. There was alſo aſſigned by the French King, unto all the King's principal counſellors, great penſions, beſides rich gifts for the preſent. Which whether the King did permit, to ſave his own purſe from rewards, or to communicate the envy of a buſineſs, that was diſpleaſing to his people, was diverſly interpreted. For certainly the King had no great fancy to own this peace. And therefore a little before it was concluded, he had underhand procured ſome of his beſt captains and men of war to adviſe him to a peace, under their hands, in an earneſt manner, in the nature of a ſupplication.

But

But the truth is, this peace was welcome to both Kings. To Charles, for that it aſſured unto him the poſſeſſion of Britain, and freed the enterprize of Naples. To Henry, for that it filled his coffers; and that he foreſaw at that time a ſtorm of inward troubles coming upon him, which preſently after brake forth. But it gave no leſs diſcontent to the nobility, and principal perſons of the army, who had many of them ſold or engaged their eſtates upon the hopes of the war. They ſtuck not to ſay, "That the King cared not to plume his nobility and "people, to feather himſelf." And ſome made themſelves merry with that the King had ſaid in parliament; "That after the war was once begun, he "doubted not but to make it pay itſelf;" ſaying, he had kept promiſe.

Having riſen from Bouloign, he went to Calais, where he ſtayed ſome time. From whence alſo he wrote letters (which was a curteſy that he ſometimes uſed) to the mayor of London, and the aldermen his brethren; half bragging what great ſums he had obtained for the peace; knowing well that full coffers of the King is ever good news to London. And better news it would have been, if their benevolence had been but a loan. And upon the ſeventeenth of December following he returned to Weſtminſter, where he kept his Chriſtmas.

Soon after the King's return, he ſent the order of the garter to Alphonſo duke of Calabria, eldeſt ſon to Ferdinando King of Naples. An honour ſought by that Prince to hold him up in the eyes of the Italians; who expecting the arms of Charles, made great accompt of the amity of England for a bridle to France. It was received by Alphonſo with all the ceremony and pomp that could be deviſed, as things uſe to be carried that are intended for opinion. It was ſent by Urſwick; upon whom the King beſtowed this ambaſſage to help him after many dry employments.

AT this time the King began again to be haunted with ſprites, by the magick and curious arts of the lady Margaret; who raiſed up the ghoſt of Richard duke of York, ſecond ſon to King Edward the fourth, to walk and vex the King. This was a finer counterfeit ſtone than Lambert Simnel; better done, and worn upon greater hands; being graced after with the wearing of a King of France, and a King of Scotland, not of a dutcheſs of Burgundy only. And for Simnel, there was not much in him, more than that he was a handſome boy, and did not ſhame his robes. But this youth (of whom we are now to ſpeak) was ſuch a mercurial, as the like hath ſeldom been known; and could make his own part, if at any time he chanced to be out. Wherefore this being one of the ſtrangeſt examples of a perſonation, that ever was in elder or later times; it deſerveth to be diſcovered, and related at the full. Although the King's manner of ſhewing things by pieces, and by dark lights, hath ſo muffled it, that it hath left it almoſt as a myſtery to this day.

The lady Margaret (whom the King's friends called Juno, becauſe ſhe was to him as Juno was to Æneas, ſtirring both heaven and hell to do him miſchief) for a foundation of her particular practices againſt him, did continually, by all means poſſible, nouriſh, maintain, and divulge the flying opinion, that Richard duke of York (ſecond ſon to Edward the fourth) was not murdered in the Tower (as was given out) but ſaved alive. For that thoſe who were employed in that barbarous fact, having deſtroyed the elder brother, were ſtricken with remorſe and compaſſion towards the younger, and ſet him privily at liberty to ſeek his fortune. This lure ſhe caſt abroad, thinking that this fame and belief (together with the freſh example of Lambert Simnel) would draw at one time or other ſome birds to ſtrike upon it. She uſed likewiſe a farther diligence, not committing all to chance: for ſhe had ſome ſecret eſpials (like to the Turks commiſſioners for children of tribute) to look abroad for handſome and graceful youths, to make Plantagenets, and dukes of York. At the laſt ſhe did light on one, in whom all things met, as one would wiſh, to ſerve her turn for a counterfeit of Richard duke of York.

This was Perkin Warbeck, whoſe adventures we ſhall now deſcribe. For firſt, the years agreed well. Secondly, he was a youth of fine favour and ſhape. But more than that, he had ſuch a crafty and bewitching faſhion, both to move

pity,

pity, and to induce belief, as was like a kind of faſcination and inchantment to thoſe that ſaw him or heard him. Thirdly, he had been from his childhood ſuch a wanderer, or (as the King called him) ſuch a land-loper, as it was extreme hard to hunt out his neſt and parents. Neither again could any man, by company or converſing with him, be able to ſay or detect well what he was, he did ſo flit from place to place. Laſtly, there was a circumſtance (which is mentioned by one that wrote in the ſame time) that is very likely to have made ſomewhat to the matter; which is, that King Edward the fourth was his godfather. Which, as it is ſomewhat ſuſpicious, for a wanton Prince to become goſſip in ſo mean a houſe, and might make a man think, that he might indeed have in him ſome baſe blood of the houſe of York; ſo at the leaſt (though that were not) it might give the occaſion to the boy, in being called King Edward's godſon, or perhaps in ſport King Edward's ſon, to entertain ſuch thoughts into his head. For tutor he had none (for ought that appears) as Lambert Simnel had, until he came unto the lady Margaret, who inſtructed him.

Thus therefore it came to paſs: There was a townſman of Tournay, that had born office in that town, whoſe name was John Oſbeck, a convert Jew, married to Katherine de Faro, whoſe buſineſs drew him to live for a time with his wife at London, in King Edward the fourth's days. During which time he had a ſon by her, and being known in court, the King either out of a religious nobleneſs, becauſe he was a convert, or upon ſome private acquaintance did him the honour as to be godfather to his child, and named him Peter. But aftewards, proving a dainty and effeminate youth, he was commonly called by the diminutive of his name, Peter-kin, or Perkin. For as for the name of Warbeck, it was given him when they did but gueſs at it, before examinations had been taken. But yet he had been ſo much talked on by that name, as it ſtuck by him after his true name of Oſbeck was known. While he was a young child, his parents returned with him to Tournay. Then was he placed in a houſe of a kinſman of his, called John Stenbeck, at Antwerp, and ſo roved up and down between Antwerp and Tournay, and other towns of Flanders, for a good time; living much in Engliſh company, and having the Engliſh tongue perfect. In which time, being grown a comely youth, he was brought by ſome of the eſpials of the lady Margaret into her preſence. Who viewing him well, and ſeeing that he had a face and perſonage that would bear a noble fortune; and finding him otherwiſe of a fine ſpirit, and winning behaviour; thought ſhe had now found a curious piece of marble, to carve out an image of a duke of York. She kept him by her a great while, but with extreme ſecrecy. The while ſhe inſtructed him by many cabinet conferences. Firſt, in princely behaviour and geſture; teaching him how he ſhould keep ſtate, and yet with a modeſt ſenſe of his misfortunes. Then ſhe informed him of all the circumſtances and particulars that concerned the perſon of Richard duke of York, which he was to act: deſcribing unto him the perſonages, lineaments, and features of the King and Queen his pretended parents; and of his brother, and ſiſters, and divers others, that were neareſt him in his childhood; together with all paſſages, ſome ſecret, ſome common, that were fit for a child's memory, until the death of King Edward. Then ſhe added the particulars of the time from the King's death, until he and his brother were committed to the Tower, as well during the time he was abroad, as while he was in ſanctuary. As for the times while he was in the Tower, and the manner of his brother's death, and his own eſcape; ſhe knew they were things that a very few could controul. And therefore ſhe taught him only to tell a ſmooth and likely tale of thoſe matters; warning him not to vary from it. It was agreed likewiſe between them, what account he ſhould give of his peregrination abroad, intermixing many things which were true, and ſuch as they knew others could teſtify, for the credit of the reſt; but ſtill making them to hang together with the part he was to play. She taught him likewiſe how to avoid ſundry captious and tempting queſtions, which were like to be aſked of him. But in this ſhe found him of himſelf ſo nimble and ſhifting, as ſhe truſted much to his own wit and readineſs; and therefore laboured the leſs in it. Laſtly, ſhe raiſed his thoughts with ſome preſent rewards,

and farther promiſes; ſetting before him chiefly the glory and fortune of a crown, if things went well, and a ſure refuge to her court, if the worſt ſhould fall. After ſuch time as ſhe thought he was perfect in his leſſon, ſhe began to caſt with herſelf from what coaſt this blazing ſtar ſhould firſt appear, and at what time it muſt be upon the horizon of Ireland; for there had the like meteor ſtrong influence before. The time of the apparition to be, when the King ſhould be engaged into a war with France. But well ſhe knew, that whatſoever ſhould come from her, would be held ſuſpected. And therefore, if he ſhould go out of Flanders immediately into Ireland, ſhe might be thought to have ſome hand in it. And beſides, the time was not yet ripe; for that the two Kings were then upon terms of peace. Therefore ſhe wheeled about; and to put all ſuſpicion afar off, and loth to keep him any longer by her (for that ſhe knew ſecrets are not long-lived) ſhe ſent him unknown into Portugal, with the lady Brampton, an Engliſh lady, that embarked for Portugal at that time; with ſome *privado* of her own, to have an eye upon him, and there he was to remain, and to expect her farther directions. In the mean time, ſhe omitted not to prepare things for his better welcome and accepting, not only in the kingdom of Ireland, but in the court of France. He continued in Portugal about a year; and by that time the King of England called his parliament (as hath been ſaid) and declared open war againſt France. Now did the ſign reign, and the conſtellation was come, under which Perkin ſhould appear. And therefore he was ſtraight ſent unto by the dutcheſs to go for Ireland, according to the firſt deſignment. In Ireland he did arrive at the town of Cork. When he was thither come, his own tale was (when he made his confeſſion afterwards) that the Iriſhmen, finding him in ſome good clothes, came flocking about him, and bare him down that he was the duke of Clarence that had been there before. And after, that he was Richard the third's baſe ſon. And laſtly, that he was Richard duke of York, ſecond ſon to Edward the fourth. But that he (for his part) renounced all theſe things, and offered to ſwear upon the holy Evangeliſts, that he was no ſuch man; till at laſt they forced it upon him, and bade him fear nothing, and ſo forth. But the truth is, that immediately upon his coming into Ireland, he took upon him the ſaid perſon of the duke of York, and drew unto him complices and partakers, by all the means he could deviſe. Inſomuch as he wrote his letters unto the earls of Deſmond and Kildare, to come in to his aid, and be of his party; the originals of which letters are yet extant.

Somewhat before this time, the dutcheſs had alſo gained unto her a near ſervant of King Henry's own, one Stephen Frion, his ſecretary for the French tongue; an active man, but turbulent and diſcontented. This Frion had fled over to Charles the French King, and put himſelf into his ſervice, at ſuch time as he began to be in open enmity with the King. Now King Charles, when he underſtood of the perſon and attempts of Perkin (ready of himſelf to embrace all advantages againſt the King of England, inſtigated by Frion, and formerly prepared by the lady Margaret) forthwith diſpatched one Lucas, and this Frion, in the nature of ambaſſadors, to Perkin; to advertiſe him of the King's good inclination to him, and that he was reſolved to aid him to recover his right againſt King Henry, an uſurper of England, and an enemy of France; and wiſhed him to come over unto him at Paris. Perkin thought himſelf in heaven now that he was invited by ſo great a King in ſo honourable a manner. And imparting unto his friends in Ireland for their encouragement, how fortune called him, and what great hopes he had, ſailed preſently into France. When he was come to the court of France, the King received him with great honour; ſaluted, and ſtyled him by the name of the duke of York; lodged him, and accommodated him in great ſtate. And the better to give him the repreſentation and the countenance of a Prince, aſſigned him a guard for his perſon, whereof the lord Congreſall was captain. The courtiers likewiſe (though it be ill mocking with the French) applied themſelves to their King's bent, ſeeing there was reaſon of ſtate for it. At the ſame time there repaired unto Perkin, divers Engliſhmen of quality; Sir George Nevile, Sir John Taylor, and about one hundred more; and amongſt the reſt, this Stephen Frion, of whom we ſpake,

who

who followed his fortune both then and for a long time after, and was indeed his principal counſellor and inſtrument in all his proceedings. But all this on the French King's part was but a trick, the better to bow King Henry to peace. And therefore, upon the firſt grain of incenſe, that was ſacrificed upon the altar of peace at Bouloign, Perkin was ſmoaked away. Yet would not the French King deliver him up to King Henry (as he was laboured to do) for his honour's ſake, but warned him away, and diſmiſſed him. And Perkin on his part was as ready to be gone, doubting he might be caught up under hand. He therefore took his way into Flanders, unto the dutcheſs of Burgundy; pretending that having been variouſly toſſed by fortune, he directed his courſe thither as to a ſafe harbour: no ways taking knowledge that he had ever been there before, but as if that had been his firſt addreſs. The dutcheſs, on the other part, made it as new and ſtrange to ſee him; pretending (at the firſt) that ſhe was taught and made wiſe by the example of Lambert Simnel, how ſhe did admit of any counterfeit ſtuff; though even in that (ſhe ſaid) ſhe was not fully ſatisfied. She pretended at the firſt (and that was ever in the preſence of others) to poſe him and ſift him, thereby to try whether he were indeed the very duke of York, or no. But ſeeming to receive full ſatisfaction by his anſwers, ſhe then feigned herſelf to be tranſported with a kind of aſtoniſhment, mixt of joy and wonder, at his miraculous deliverance; receiving him as if he were riſen from death to life: and inferring, that God, who had in ſuch wonderful manner preſerved him from death, did likewiſe reſerve him for ſome great and proſperous fortune. As for his diſmiſſion out of France, they interpreted it not, as if he were detected or neglected for a counterfeit deceiver; but contrariwiſe that it did ſhew manifeſtly unto the world, that he was ſome great matter; for that it was his abandoning that (in effect) made the peace; being no more but the ſacrificing of a poor diſtreſſed Prince, unto the utility and ambition of two mighty monarchs. Neither was Perkin, for his part, wanting to himſelf, either in gracious and princely behaviour, or in ready and appoſite anſwers, or in contenting and careſſing thoſe that did apply themſelves unto him, or in pretty ſcorn and diſdain to thoſe that ſeemed to doubt of him; but in all things did notably acquit himſelf; inſomuch as it was generally believed (as well amongſt great perſons, as amongſt the vulgar) that he was indeed duke Richard. Nay, himſelf, with long and continual counterfeiting, and with oft telling a lye, was turned by habit almoſt into the thing he ſeemed to be; and from a lyar, to a believer. The dutcheſs therefore (as in a caſe out of doubt) did him all princely honour, calling him always by the name of her nephew, and giving him the delicate title of the white roſe of England; and appointed him a guard of thirty perſons, halberdiers, clad in a party-coloured livery of murrey and blue, to attend his perſon. Her court likewiſe, and generally the Dutch and ſtrangers, in their uſage towards him, expreſſed no leſs reſpect.

The news hereof came blazing and thundering over into England, that the duke of York was ſure alive. As for the name of Perkin Warbeck, it was not at that time come to light, but all the news ran upon the duke of York; that he had been entertained in Ireland, bought and ſold in France, and was now plainly avowed, and in great honour in Flanders. Theſe fames took hold of divers; in ſome upon diſcontent; in ſome upon ambition; in ſome upon levity and deſire of change; and in ſome few upon conſcience and belief, but in moſt upon ſimplicity; and in divers, out of dependance upon ſome of the better ſort, who did in ſecret favour and nouriſh theſe bruits. And it was not long ere theſe rumours of novelty had begotten others of ſcandal and murmur againſt the King, and his government; taxing him for a great taxer of his people, and diſcountenancer of his nobility. The loſs of Britain, and the peace with France, were not forgotten. But chiefly they fell upon the wrong that he did his Queen, in that he did not reign in her right. Wherefore they ſaid, that God had now brought to light a maſculine branch of the houſe of York, that would not be at his curteſy, howſoever he did depreſs his poor lady. And yet (as it fareth in things which are current with the multitude, and which they affect) theſe fames grew ſo general, as the authors were loſt in the generality of ſpeakers. They being

being like running weeds, that have no certain root; or like footings up and down, impoſſible to be traced: but after a while theſe ill humours drew to an head, and ſettled ſecretly in ſome eminent perſons; which were Sir William Stanley lord chamberlain of the King's houſhold, the lord Fitzwalter, Sir Simon Mountfort, Sir Thomas Thwaites. Theſe entered into a ſecret conſpiracy to favour duke Richard's title. Nevertheleſs none engaged their fortunes in this buſineſs openly, but two; Sir Robert Clifford, and maſter William Barley, who ſailed over into Flanders, ſent indeed from the party of the conſpirators here, to underſtand the truth of thoſe things that paſſed there, and not without ſome help of moneys from hence; proviſionally to be delivered, if they found and were ſatisfied, that there was truth in theſe pretences. The perſon of Sir Robert Clifford (being a gentleman of fame and family) was extremely welcome to the lady Margaret. Who after ſhe had conference with him, brought him to the ſight of Perkin, with whom he had often ſpeech and diſcourſe. So that in the end, won either by the dutcheſs to affect, or by Perkin to believe, he wrote back into England, that he knew the perſon of Richard duke of York, as well as he knew his own; and that this young man was undoubtedly he. By this means all things grew prepared to revolt and ſedition here, and the conſpiracy came to have a correſpondence between Flanders and England.

The King on his part was not aſleep; but to arm or levy forces yet, he thought would but ſhew fear, and do this idol too much worſhip. Nevertheleſs the ports he did ſhut up, or at leaſt kept a watch on them, that none ſhould paſs to or fro that was ſuſpected: but for the reſt, he choſe to work by countermine. His purpoſes were two; the one, to lay open the abuſe; the other, to break the knot of the conſpirators. To detect the abuſe, there were but two ways; the firſt, to make it manifeſt to the world that the duke of York was indeed murthered; the other, to prove that were he dead or alive, yet Perkin was a counterfeit. For the firſt, thus it ſtood. There were but four perſons that could ſpeak upon knowledge, to the murther of the duke of York; Sir James Tirrel (the employed man from King Richard) John Dighton and Miles Forreſt his ſervants (the two butchers or tormentors) and the prieſt of the Tower that buried them. Of which four, Miles Forreſt and the prieſt were dead, and there remained alive only Sir James Tirrel and John Dighton. Theſe two the King cauſed to be committed to the Tower, and examined touching the manner of the death of the two innocent Princes. They agreed both in a tale (as the King gave out) to this effect: That King Richard having directed his warrant for the putting of them to death, to Brackenbury the lieutenant of the Tower, was by him refuſed. Whereupon the King directed his warrant to Sir James Tirrel, to receive the keys of the Tower from the lieutenant (for the ſpace of a night) for the King's ſpecial ſervice. That Sir James Tirrel accordingly repaired to the Tower by night, attended by his two ſervants aforenamed, whom he had choſen for that purpoſe. That himſelf ſtood at the ſtair-foot, and ſent theſe two villains to execute the murther. That they ſmothered them in their bed; and, that done, called up their maſter to ſee their naked dead bodies, which they had laid forth. That they were buried under the ſtairs, and ſome ſtones caſt upon them. That when the report was made to King Richard, that his will was done, he gave Sir James Tirrel great thanks, but took exception to the place of their burial, being too baſe for them that were King's children. Whereupon, another night, by the King's warrant renewed, their bodies were removed by the prieſt of the Tower, and buried by him in ſome place, which (by means of the prieſt's death ſoon after) could not be known. Thus much was then delivered abroad, to be the effect of thoſe examinations: but the King, nevertheleſs, made no uſe of them in any of his declarations; whereby (as it ſeems) thoſe examinations left the buſineſs ſomewhat perplexed. And as for Sir James Tirrel, he was ſoon after beheaded in the Tower-yard, for other matters of treaſon. But John Dighton (who, it ſeemeth, ſpake beſt for the King) was forthwith ſet at liberty, and was the principal means of divulging this tradition. Therefore this kind of proof being left ſo naked, the King uſed the more diligence in the latter, for the tracing of Perkin. To this purpoſe he ſent

abroad

abroad into ſeveral parts, and eſpecially into Flanders, divers ſecret and nimble ſcouts and ſpies, ſome feigning themſelves to fly over unto Perkin, and to adhere unto him; and ſome under other pretences, to learn, ſearch, and diſcover all the circumſtances and particulars of Perkin's parents, birth, perſon, travels up and down; and in brief, to have a journal (as it were) of his life and doings. He furniſhed theſe his employed men liberally with money, to draw on and reward intelligencies; giving them alſo in charge, to advertiſe continually what they found, and nevertheleſs ſtill to go on. And ever as one advertiſement and diſcovery called up another, he employed other new men, where the buſineſs did require it. Others he employed in a more ſpecial nature and truſt, to be his pioneers in the main countermine. Theſe were directed to inſinuate themſelves into the familiarity and confidence of the principal perſons of the party in Flanders, and ſo to learn what aſſociates they had, and correſpondents, either here in England, or abroad; and how far every one engaged, and what new ones they meant afterwards to try or board. And as this for the perſons, ſo for the actions themſelves, to diſcover to the bottom (as they could) the utmoſt of Perkin's and the conſpirators, their intentions, hopes, and practices. Theſe latter beſt-be-truſt ſpies had ſome of them farther inſtructions, to practiſe and draw off the beſt friends and ſervants of Perkin, by making remonſtrance to them, how weakly his enterprize and hopes were built, and with how prudent and potent a King they had to deal; and to reconcile them to the King, with promiſe of pardon and good conditions of reward. And (above the reſt) to aſſail, ſap, and work into the conſtancy of Sir Robert Clifford; and to win him (if they could) being the man that knew moſt of their ſecrets, and who being won away, would moſt appall and diſcourage the reſt, and in a manner break the knot.

There is a ſtrange tradition; that the King, being loſt in a wood of ſuſpicions, and not knowing whom to truſt, had both intelligence with the confeſſors and chaplains of divers great men; and for the better credit of his eſpials abroad with the contrary ſide, did uſe to have them curſed at Paul's (by name) amongſt the bead-roll of the King's enemies, according to the cuſtom of thoſe times. Theſe eſpials plied their charge ſo roundly, as the King had an anatomy of Perkin alive; and was likewiſe well informed of the particular correſpondent conſpirators in England, and many other myſteries were revealed; and Sir Robert Clifford in eſpecial won to be aſſured to the King, and induſtrious and officious for his ſervice. The King therefore (receiving a rich return of his diligence, and great ſatisfaction touching a number of particulars) firſt divulged and ſpread abroad the impoſture and juggling of Perkin's perſon and travels, with the circumſtances thereof, throughout the realm: not by proclamation (becauſe things were yet in examination, and ſo might receive the more or the leſs) but by court-fames, which commonly print better than printed proclamations. Then thought he it alſo time to ſend an ambaſſage unto archduke Philip into Flanders, for the abandoning and diſmiſſing of Perkin. Herein he employed Sir Edward Poynings, and Sir William Warham, doctor of the canon law. The archduke was then young, and governed by his council: before whom the ambaſſadors had audience; and doctor Warham ſpake in this manner:

"MY lords, the King our maſter is very ſorry, that England and your "country here of Flanders, having been counted as man and wife for ſo long "time; now this country of all others ſhould be the ſtage, where a baſe coun-"terfeit ſhould play the part of a King of England; not only to his grace's diſ-"quiet and diſhonour, but to the ſcorn and reproach of all ſovereign Princes. "To counterfeit the dead image of a King in his coin, is an high offence by all "laws; but to counterfeit the living image of a King in his perſon, exceedeth "all falſifications, except it ſhould be that of a Mahomet, or an Antichriſt, that "counterfeit divine honour. The King hath too great an opinion of this ſage "council, to think that any of you is caught with this fable (though way may "be given by you to the paſſion of ſome) the thing in itſelf is ſo improbable. "To ſet teſtimonies aſide of the death of duke Richard, which the King hath "upon record, plain and infallible (becauſe they may be thought to be in the "King's own power) let the thing teſtify for itſelf. Senſe and reaſon no power

" can command. Is it poſſible (trow you) that King Richard ſhould damn his " ſoul, and foul his name with ſo abominable a murder, and yet not mend his " caſe? Or do you think, that men of blood (that were his inſtruments) did " turn to pity in the midſt of their execution? Whereas in cruel and ſavage " beaſts, and men alſo, the firſt draught of blood doth yet make them more " fierce and enraged. Do you not know, that the bloody executioners of ty- " rants do go to ſuch errands with an halter about their neck; ſo that if they " perform not, they are ſure to die for it? And do you think that theſe men " would hazard their own lives, for ſparing another's? Admit they ſhould have " ſaved him; what ſhould they have done with him? Turn him into London ſtreets, " that the watchmen, or any paſſenger that ſhould light upon him, might carry " him before a juſtice, and ſo all come to light? Or ſhould they have kept him " by them ſecretly? That ſurely would have required a great deal of care, charge, " and continual fears. But (my lords) I labour too much in a clear buſineſs. " The King is ſo wiſe, and hath ſo good friends abroad, as now he knoweth " duke Perkin from his cradle. And becauſe he is a great Prince, if you have " any good poet here, he can help him with notes to write his life; and to " parallel him with Lambert Simnel, now the King's falconer. And therefore " (to ſpeak plainly to your lordſhips) it is the ſtrangeſt thing in the world, that " the lady Margaret (excuſe us if we name her, whoſe malice to the King is both " cauſeleſs and endleſs) ſhould now when ſhe is old, at the time when other " women give over child-bearing, bring forth two ſuch monſters; being not the " births of nine or ten months, but of many years. And whereas other natural " mothers bring forth children weak, and not able to help themſelves; ſhe " bringeth forth tall ſtriplings, able ſoon after their coming into the world to " bid battle to mighty Kings. My lords, we ſtay unwillingly upon this part. " We would to God, that lady would once taſte the joys which God Almighty " doth ſerve up unto her, in beholding her niece to reign in ſuch honour, and " with ſo much royal iſſue, which ſhe might be pleaſed to account as her own. " The King's requeſt unto the archduke, and your lordſhips, might be; that, " according to the example of King Charles, who hath already diſcarded him, " you would baniſh this unworthy fellow out of your dominions. But becauſe " the King may juſtly expect more from an ancient confederate, than from a new " reconciled enemy, he maketh his requeſt unto you to deliver him up into his " hands: pirates, and impoſtors of this ſort, being fit to be accounted the common " enemies of mankind, and no ways to be protected by the law of nations."

After ſome time of deliberation, the ambaſſadors received this ſhort anſwer:

" THAT the archduke, for the love of King Henry, would in no ſort aid " or aſſiſt the pretended duke, but in all things conſerve the amity he had with " the King: But for the dutcheſs dowager, ſhe was abſolute in the lands of her " dowry, and that he could not let her to diſpoſe of her own."

The King, upon the return of the ambaſſadors, was nothing ſatisfied with this anſwer. For well he knew, that a patrimonial dowry carried no part of ſove- reignty, or command of forces. Beſides, the ambaſſadors told him plainly, that they ſaw the dutcheſs had a great party in the archduke's council; and that howſoever it was carried in a courſe of connivance, yet the archduke underhand gave aid and furtherance to Perkin. Wherefore (partly out of courage, and partly out of policy) the King forthwith baniſhed all Flemings (as well their perſons as their wares) out of his kingdom; commanding his ſubjects likewiſe (and by name his merchants adventurers) which had a reſiance at Antwerp, to return; tranſlating the mart (which commonly followed the Engliſh cloth) unto Calais; and embarred alſo all farther trade for the future. This the King did, being ſenſible in point of honour, not to ſuffer a pretender to the crown of England to affront him ſo near at hand, and he to keep terms of friendſhip with the country where he did ſet up. But he had alſo a farther reach: for that he knew well, that the ſubjects of Flanders drew ſo great commodity from the trade of England, as by this embargo they would ſoon wax weary of Perkin; and that the tumults of Flanders had been ſo late and freſh, as it was no time for the Prince to diſpleaſe the people. Nevertheleſs for form's ſake, by way

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of requital, the archduke did likewiſe baniſh the Engliſh out of Flanders; which in effect was done to his hand.

The King being well advertiſed, that Perkin did more truſt upon friends and partakers within the realm, than upon foreign arms, thought it behoved him to apply the remedy where the diſeaſe lay; and to proceed with ſeverity againſt ſome of the principal conſpirators here within the realm; thereby to purge the ill humours in England, and to cool the hopes in Flanders. Wherefore he cauſed to be apprehended (almoſt at an inſtant) John Ratcliffe lord Fitzwalter, Sir Simon Mountfort, Sir Thomas Thwaites, William D'Aubigney, Robert Ratcliffe, Thomas Creſſenor, and Thomas Aſtwood. All theſe were arraigned, convicted, and condemned for high-treaſon, in adhering and promiſing aid to Perkin. Of theſe the lord Fitzwalter was conveyed to Calais, and there kept in hold, and in hope of life, until ſoon after (either impatient or betrayed) he dealt with his keeper to have eſcaped, and thereupon was beheaded. But Sir Simon Mountfort, Robert Ratcliffe, and William D'Aubigney, were beheaded immediately after their condemnation. The reſt were pardoned, together with many others, clerks and laicks, amongſt which were two Dominican friars, and William Worſeley dean of Paul's; which latter ſort paſſed examination, but came not to publick trial.

The lord chamberlain at that time was not touched; whether it were that the King would not ſtir too many humours at once, but (after the manner of good phyſicians) purge the head laſt; or that Clifford (from whom moſt of theſe diſcoveries came) reſerved that piece for his own coming over; ſignifying only to the King in the mean time, that he doubted there were ſome greater ones in the buſineſs, whereof he would give the King farther account when he came to his preſence.

Upon Alhallows-day even, being now the tenth year of the King's reign, the King's ſecond ſon Henry was created duke of York; and as well the duke, as divers others, noblemen, knights-batchelors, and gentlemen of quality, were made knights of the Bath according to the ceremony. Upon the morrow after twelfth-day, the King removed from Weſtminſter (where he had kept his Chriſtmas) to the Tower of London. This he did as ſoon as he had advertiſement that Sir Robert Clifford (in whoſe boſom or budget moſt of Perkin's ſecrets were laid up) was come into England. And the place of the Tower was choſen to that end, that if Clifford ſhould accuſe any of the great ones, they might without ſuſpicion, or noiſe, or ſending abroad of warrants, be preſently attached; the court and priſon being within the cincture of one wall. After a day or two, the King drew unto him a ſelected council, and admitted Clifford to his preſence; who firſt fell down at his feet, and in all humble manner craved the King's pardon; which the King then granted, though he were indeed ſecretly aſſured of his life before. Then commanded to tell his knowledge, he did amongſt many others (of himſelf, not interrogated) impeach Sir William Stanley, the lord chamberlain of the King's houſhold.

The King ſeemed to be much amazed at the naming of this lord, as if he had heard the news of ſome ſtrange and fearful prodigy. To hear a man that had done him ſervice of ſo high a nature, as to ſave his life, and ſet the crown upon his head; a man, that enjoyed, by his favour and advancement, ſo great a fortune both in honour and riches; a man, that was tied unto him in ſo near a band of alliance, his brother having married the King's mother; and laſtly, a man, to whom he had committed the truſt of his perſon, in making him his chamberlain: that this man, no ways diſgraced, no ways diſcontent, no ways put in fear, ſhould be falſe unto him. Clifford was required to ſay over again and again, the particulars of his accuſation; being warned, that in a matter ſo unlikely, and that concerned ſo great a ſervant of the King's, he ſhould not in any wiſe go too far. But the King finding that he did ſadly and conſtantly (without heſitation or varying, and with thoſe civil proteſtations that were fit) ſtand to that that he had ſaid, offering to juſtify it upon his ſoul and life; he cauſed him to be removed. And after he had not a little bemoaned himſelf unto his council there preſent, gave order that Sir William Stanley ſhould be

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reſtrained in his own chamber where he lay before, in the ſquare tower: and the next day he was examined by the lords. Upon his examination he denied little of that wherewith he was charged, nor endeavoured much to excuſe or extenuate his fault: ſo that (not very wiſely) thinking to make his offence leſs by confeſſion, he made it enough for condemnation. It was conceived, that he truſted much to his former merits, and the intereſt that his brother had in the King. But thoſe helps were over-weighed by divers things that made againſt him, and were predominant in the King's nature and mind. Firſt, an over-merit; for convenient merit, unto which reward may eaſily reach, doth beſt with Kings. Next, the ſenſe of his power; for the King thought, that he that could ſet him up, was the more dangerous to pull him down. Thirdly, the glimmering of a confiſcation; for he was the richeſt ſubject for value in the kingdom: there being found in his caſtle of Holt forty thouſand marks in ready money, and plate, beſides jewels, houſhold ſtuff, ſtocks upon his grounds, and other perſonal eſtate, exceeding great. And for his revenue in land and fee, it was three thouſand pounds a year of old rent, a great matter in thoſe times. Laſtly, the nature of the time; for if the King had been out of fear of his own eſtate, it was not unlike he would have ſpared his life. But the cloud of ſo great a rebellion hanging over his head, made him work ſure. Wherefore after ſome ſix weeks diſtance of time, which the King did honourably interpoſe, both to give ſpace to his brother's interceſſion, and to ſhew to the world that he had a conflict with himſelf what he ſhould do; he was arraigned of high-treaſon, and condemned, and preſently after beheaded.

Yet is it to this day left but in dark memory, both what the caſe of this noble perſon was, for which he ſuffered; and what likewiſe was the ground and cauſe of his defection, and the alienation of his heart from the King. His caſe was ſaid to be this; That in diſcourſe between Sir Robert Clifford and him he had ſaid, "That if he were ſure that that young man were King Edward's "ſon, he would never bear arms againſt him." This caſe ſeems ſomewhat an hard caſe, both in reſpect of the conditional, and in reſpect of the other words. But for the conditional, it ſeemeth the judges of that time (who were learned men, and the three chief of them of the privy council) thought it was a dangerous thing to admit *ifs* and *ands*, to qualify words of treaſon; whereby every man might expreſs his malice, and blanch his danger. And it was like to the caſe (in the following times) of Elizabeth Barton, the holy maid of Kent; who had ſaid, "That if King Henry the eighth did not take Katherine "his wife again, he ſhould be deprived of his crown, and die the death of a "dog." And infinite caſes may be put of like nature; which (it ſeemeth) the grave judges taking into conſideration, would not admit of treaſons upon condition. And as for the poſitive words, "That he would not bear arms "againſt King Edward's ſon;" though the words ſeem calm, yet it was a plain and direct over-ruling of the King's title, either by the line of Lancaſter, or by act of parliament: which (no doubt) pierced the King more, than if Stanley had charged his lance upon him in the field. For if Stanley would hold that opinion, that a ſon of King Edward had ſtill the better right, he being ſo principal a perſon of authority and favour about the King, it was to teach all England to ſay as much. And therefore (as thoſe times were) that ſpeech touched the quick. But ſome writers do put this out of doubt; for they ſay, that Stanley did expreſly promiſe to aid Perkin, and ſent him ſome help of treaſure.

Now for the motive of his falling off from the King; it is true, that at Boſworth field the King was beſet, and in a manner incloſed round about by the troops of King Richard, and in manifeſt danger of his life; when this Stanley was ſent by his brother, with three thouſand men to his reſcue, which he performed ſo, that King Richard was ſlain upon the place. So as the condition of mortal men is not capable of a greater benefit, than the King received by the hands of Stanley; being like the benefit of Chriſt, at once to ſave and crown. For which ſervice the King gave him great gifts, made him his counſellor and chamberlain; and (ſomewhat contrary to his nature) had winked at the great ſpoils of Boſworth field, which came almoſt wholly to this man's hands,

hands, to his infinite enriching. Yet nevertheleſs, blown up with the conceit of his merit, he did not think he had received good meaſure from the King, at leaſt not preſſing down, and running over, as he expected. And his ambition was ſo exorbitant and unbounded, as he became ſuitor to the King for the earldom of Cheſter: which ever being a kind of appennage to the principality of Wales, and uſing to go to the King's ſon, his ſuit did not only end in a denial, but in a diſtaſte: the King perceiving thereby, that his deſires were intemperate, and his cogitations vaſt and irregular, and that his former benefits were but cheap, and lightly regarded by him. Wherefore the King began not to brook him well. And as a little leaven of new diſtaſte doth commonly ſour the whole lump of former merits, the King's wit began now to ſuggeſt unto his paſſion, that Stanley at Boſworth field, though he came time enough to ſave his life, yet he ſtayed long enough to endanger it. But yet having no matter againſt him, he continued him in his places until this his fall.

After him was made lord chamberlain Giles lord D'Aubigny, a man of great ſufficiency and valour; the more becauſe he was gentle and moderate.

There was a common opinion, that Sir Robert Clifford (who now was become the ſtate informer) was from the beginning an emiſſary and ſpy of the King's; and that he fled over into Flanders with his conſent and privity. But this is not probable; both becauſe he never recovered that degree of grace, which he had with the King before his going over; and chiefly, for that the diſcovery which he had made touching the lord chamberlain (which was his great ſervice) grew not from any thing he learned abroad, for that he knew it well before he went.

Theſe executions (and eſpecially that of the lord chamberlain, which was the chief ſtrength of the party, and by means of Sir Robert Clifford, who was the moſt inward man of truſt amongſt them) did extremely quail the deſign of Perkin, and his complices, as well through diſcouragement as diſtruſt. So that they were now (like ſand without lime) ill bound together; eſpecially as many as were Engliſh, who were at a gaze, looking ſtrange one upon another, not knowing who was faithful to their ſide; but thinking, that the King (what with his baits, and what with his nets) would draw them all unto him that were any thing worth. And indeed it came to paſs, that divers came away by the thread, ſometimes one, and ſometimes another. Barley (that was joint commiſſioner with Clifford) did hold out one of the longeſt, till Perkin was far worn; yet made his peace at the length. But the fall of this great man, being in ſo high authority and favour (as was thought) with the King; and the manner of carriage of the buſineſs, as if there had been ſecret inquiſition upon him for a great time before; and the cauſe for which he ſuffered, which was little more than for ſaying in effect, that the title of York was better than the title of Lancaſter; which was the caſe almoſt of every man (at the leaſt in opinion) was matter of great terror amongſt all the King's ſervants and ſubjects; inſomuch as no man almoſt thought himſelf ſecure, and men durſt ſcarce commune or talk one with another, but there was a general diffidence every where: which nevertheleſs made the King rather more abſolute, than more ſafe. For "bleeding inwards, and ſhut vapours, ſtrangle ſooneſt, and oppreſs moſt."

Hereupon preſently came forth ſwarms and volies of libels (which are the guſts of liberty of ſpeech reſtrained, and the females of ſedition) containing bitter invectives and ſlanders againſt the King, and ſome of the council: for the contriving and diſperſing whereof (after great diligence of enquiry) five mean perſons were caught up and executed.

Mean while the King did not neglect Ireland, being the ſoil where theſe muſhrooms and upſtart weeds (that ſpring up in a night) did chiefly proſper. He ſent therefore from hence (for the better ſettling of his affairs there) commiſſioners of both robes, the prior of Lanthony, to be his chancellor in that kingdom; and Sir Edward Poynings, with a power of men, and a martial commiſſion, together with a civil power of his lieutenant, with a clauſe, that the earl of Kildare, then deputy, ſhould obey him. But the wild Iriſh (who were the principal offenders) fled into the woods and bogs, after their manner; and thoſe that knew themſelves guilty in the pale fled to them. So that Sir

Edward Poynings was enforced to make a wild chaſe upon the wild Iriſh; where (in reſpect of the mountains and faſtneſſes) he did little good. Which (either out of a ſuſpicious melancholy upon his bad ſucceſs, or the better to ſave his ſervice from diſgrace) he would needs impute unto the comfort that the rebels ſhould receive underhand from the earl of Kildare; every light ſuſpicion growing upon the earl, in reſpect of the Kildare that was in the action of Lambert Simnel, and ſlain at Stokefield. Wherefore he cauſed the earl to be apprehended, and ſent into England; where, upon examination, he cleared himſelf ſo well, as he was replaced in his government. But Poynings (the better to make compenſation of the meagerneſs of his ſervice in the wars by acts of peace) called a parliament; where was made that memorable act, which at this day is called Poynings's law, whereby all the ſtatutes of England were made to be of force in Ireland: for before they were not, neither are any now in force in Ireland, which were made in England ſince that time; which was the tenth year of the King.

About this time began to be diſcovered in the King that diſpoſition, which afterward, nouriſhed and whet on by bad counſellors and miniſters, proved the blot of his times; which was the courſe he took to cruſh treaſure out of his ſubjects purſes, by forfeitures upon penal laws. At this men did ſtartle the more at this time, becauſe it appeared plainly to be in the King's nature, and not out of his neceſſity, he being now in float for treaſure: for that he had newly received the peace-money from France, the benevolence-money from his ſubjects, and great caſualties upon the confiſcations of the lord chamberlain, and divers others. The firſt noted caſe of this kind was that of Sir William Capel, alderman of London; who, upon ſundry penal laws, was condemned in the ſum of ſeven and twenty hundred pounds, and compounded with the King for ſixteen hundred: and yet after, Empſon would have cut another chop out of him, if the King had not died in the inſtant.

The ſummer following, the King, to comfort his mother (whom he did always tenderly love and revere) and to make open demonſtration to the world, that the proceedings againſt Sir William Stanley (which was impoſed upon him by neceſſity of ſtate) had not in any degree diminiſhed the affection he bare to Thomas his brother, went in progreſs to Latham, to make merry with his mother and the earl, and lay there divers days.

During this progreſs, Perkin Warbeck finding that time and temporizing, which (whilſt his practices were covert, and wrought well in England) made for him; did now, when they were diſcovered and defeated, rather make againſt him (for that when matters once go down the hill, they ſtay not without a new force) reſolved to try his adventure in ſome exploit upon England; hoping ſtill upon the affections of the common people towards the houſe of York. Which body of common people he thought was not to be practiſed upon, as perſons of quality are; but that the only practice upon their affections, was to ſet up a ſtandard in the field. The place where he ſhould make his attempt, he choſe to be the coaſt of Kent.

The King by this time was grown to ſuch a height of reputation for cunning and policy, that every accident and event that went well, was laid and imputed to his foreſight, as if he had ſet it before: as in this particular of Perkin's deſign upon Kent. For the world would not believe afterwards, but the King, having ſecret intelligence of Perkin's intention for Kent (the better to draw it on), went of purpoſe into the north afar off, laying an open ſide unto Perkin, to make him come to the cloſe, and ſo to trip up his heels, having made ſure in Kent beforehand.

But ſo it was, that Perkin had gathered together a power of all nations, neither in number, nor in the hardineſs and courage of the perſons, contemptible, but in their nature and fortunes to be feared, as well of friends as enemies; being bankrupts, and many of them felons, and ſuch as lived by rapine. Theſe he put to ſea, and arrived upon the coaſt of Sandwich, and Deal in Kent, about July.

There he caſt anchor, and to prove the affections of the people, ſent ſome of his men to land, making great boaſts of the power that was to follow.

The

The Kentiſh men, perceiving that Perkin was not followed by any Engliſh of name or account, and that his forces conſiſted but of ſtrangers born, and moſt of them baſe people and free-booters, fitter to ſpoil a coaſt, than to recover a kingdom; reſorting unto the principal gentlemen of the country, profeſſed their loyalty to the King, and deſired to be directed and commanded for the beſt of the King's ſervice. The gentlemen entering into conſultation, directed ſome forces in good number to ſhew themſelves upon the coaſt; and ſome of them to make ſigns to entice Perkin's ſoldiers to land, as if they would join with them; and ſome others to appear from ſome other places, and to make ſemblance as if they fled from them, the better to encourage them to land. But Perkin (who by playing the Prince, or elſe taught by ſecretary Frion, had learned thus much, that people under command do uſe to conſult, and after to march in order; and rebels contrariwiſe run upon an head together in confuſion) conſidering the delay of time, and obſerving their orderly, and not tumultuary arming, doubted the worſt. And therefore the wily youth would not ſet one foot out of his ſhip, till he might ſee things were ſure. Wherefore the King's forces, perceiving that they could draw on no more than thoſe that were formerly landed, ſet upon them and cut them in pieces, ere they could fly back to their ſhips. In which ſkirmiſh (beſides thoſe that fled and were ſlain) there were taken about an hundred and fifty perſons. Which, for that the King thought, that to puniſh a few for example was gentleman's pay; but for raſcal people, they were to be cut off every man, eſpecially in the beginning of an enterprize; and likewiſe for that he ſaw, that Perkin's forces would now conſiſt chiefly of ſuch rabble and ſcum of deſperate people, he therefore hanged them all for the greater terror. They were brought to London all railed in ropes, like a team of horſes in a cart, and were executed ſome of them at London and Wapping, and the reſt at divers places upon the ſea-coaſt of Kent, Suſſex, and Norfolk, for ſea-marks, or light-houſes, to teach Perkin's people to avoid the coaſt. The King being advertiſed of the landing of the rebels, thought to leave his progreſs: but being certified the next day, that they were partly defeated, and partly fled, he continued his progreſs, and ſent Sir Richard Guildford into Kent in meſſage; who calling the country together, did much commend from the King their fidelity, manhood, and well handling of that ſervice; and gave them all thanks, and (in private) promiſed reward to ſome particulars.

Upon the ſixteenth of November (this being the eleventh year of the King) was holden the ſerjeants feaſt at Ely place, there being nine ſerjeants of that call. The King, to honour the feaſt, was preſent with his Queen at the dinner; being a Prince that was ever ready to grace and countenance the profeſſors of the law; having a little of that, that as he governed his ſubjects by his laws, ſo he governed his laws by his lawyers.

This year alſo the King entered into league with the Italian potentates for the defence of Italy againſt France. For King Charles had conquered the realm of Naples, and loſt it again, in a kind of felicity of a dream. He paſſed the whole length of Italy without reſiſtance; ſo that it was true which Pope Alexander was wont to ſay, That the Frenchmen came into Italy with chalk in their hands, to mark up their lodgings, rather than with ſwords to fight. He likewiſe entered and won (in effect) the whole kingdom of Naples itſelf, without ſtriking ſtroke. But preſently thereupon he did commit and multiply ſo many errors, as was too great a taſk for the beſt fortune to overcome. He gave no contentment to the barons of Naples, of the faction of the Angeovines; but ſcattered his rewards according to the mercenary appetites of ſome about him. He put all Italy upon their guard, by the ſeizing and holding of Oſtia, and the protecting of the liberty of Piſa; which made all men ſuſpect, that his purpoſes looked farther than his title of Naples. He fell too ſoon at difference with Ludovico Sforza, who was the man that carried the keys which brought him in and ſhut him out. He neglected to extinguiſh ſome relicks of the war. And laſtly, in regard of his eaſy paſſage through Italy without reſiſtance, he entered into an overmuch deſpiſing of the arms of the Italians; whereby he left the realm of Naples at his departure ſo much the leſs provided. So that not long after his return,

return, the whole kingdom revolted to Ferdinando the younger, and the French were quite driven out. Nevertheleſs Charles did make both great threats, and great preparations to re-enter Italy once again. Wherefore at the inſtance of divers of the ſtates of Italy (and eſpecially of Pope Alexander) there was a league concluded between the ſaid Pope, Maximilian King of the Romans, Henry King of England, Ferdinando and Iſabella King and Queen of Spain (for ſo they are conſtantly placed in the original treaty throughout) Auguſtino Barbadico duke of Venice, and Ludovico Sfortia duke of Milan, for the common defence of their eſtates: wherein though Ferdinando of Naples was not named as principal, yet (no doubt) the kingdom of Naples was tacitly included, as a fee of the church.

There died alſo this year Cecile dutcheſs of York, mother to King Edward the fourth, at her caſtle of Barkhamſted, being of extreme years, and who had lived to ſee three Princes of her body crowned, and four murdered. She was buried at Foderingham, by her huſband.

This year alſo the King called his parliament, where many laws were made of a more private and vulgar nature, than ought to detain the reader of an hiſtory. And it may be juſtly ſuſpected by the proceedings following, that as the King did excel in good commonwealth laws, ſo nevertheleſs he had (in ſecret) a deſign to make uſe of them, as well for collecting of treaſure, as for correcting of manners; and ſo meaning thereby to harrow his people, did accumulate them the rather.

The principal law that was made this parliament, was a law of a ſtrange nature; rather juſt than legal; and more magnanimous than provident. This law did ordain; That no perſon that did aſſiſt in arms, or otherwiſe, the King for the time being, ſhould after be impeached therefore, or attainted, either by the courſe of the law, or by act of parliament. But if any ſuch act of attainder did happen to be made, it ſhould be void and of none effect; for that it was agreeable to reaſon of eſtate, that the ſubject ſhould not enquire of the juſtneſs of the King's title, or quarrel; and it was agreeable to good conſcience, that (whatſoever the fortune of the war were) the ſubject ſhould not ſuffer for his obedience. The ſpirit of this law was wonderful pious and noble, being like, in matter of war, unto the ſpirit of David in matter of plague; who ſaid, *If I have ſinned, ſtrike me; but what have theſe ſheep done?* Neither wanted this law parts of prudent and deep foreſight: for it did the better take away occaſion for the people to buſy themſelves to pry into the King's title; for that howſoever it fell, their ſafety was already provided for. Beſides, it could not but greatly draw unto him the love and hearts of the people, becauſe he ſeemed more careful for them than for himſelf. But yet nevertheleſs it did take off from his party that great tie and ſpur of neceſſity, to fight and go victors out of the field; conſidering their lives and fortunes were put in ſafety and protected, whether they ſtood to it, or ran away. But the force and obligation of this law was in itſelf illuſory, as to the latter part of it, by a precedent act of parliament to bind or fruſtrate a future. For a ſupreme and abſolute power cannot conclude itſelf, neither can that which is in nature revocable be made fixed, no more than if a man ſhould appoint or declare by his will, that if he made any latter will it ſhould be void. And for the caſe of the act of parliament, there is a notable precedent of it in King Henry the eighth's time; who doubting he might die in the minority of his ſon, procured an act to paſs, That no ſtatute made during the minority of the King, ſhould bind him or his ſucceſſors, except it were confirmed by the King under his great ſeal, at his full age. But the firſt act that paſſed in King Edward the ſixth's time, was an act of repeal of that former act; at which time nevertheleſs the King was minor. But things that do not bind, may ſatisfy for the time.

There was alſo made a ſhoaring or under-propping act for the benevolence; to make the ſums which any perſon had agreed to pay, and nevertheleſs were not brought in, to be leviable by courſe of law. Which act did not only bring in the arrears, but did indeed countenance the whole buſineſs, and was pretended to be made at the deſire of thoſe that had been forward to pay.

This parliament alſo was made that good law, which gave the attaint upon a falſe verdict between party and party, which before was a kind of evangile, irremediable. It extends not to cauſes capital, as well becauſe they are for

the moſt part at the King's ſuit; as becauſe in them (if they be followed in courſe of indictment) there paſſeth a double jury, the indictors, and the triers; and ſo not twelve men, but four and twenty. But it ſeemeth that was not the only reaſon; for this reaſon holdeth not in the appeal. But the great reaſon was, leſt it ſhould tend to the diſcouragement of jurors in caſes of life and death; if they ſhould be ſubject to ſuit and penalty, where the favour of life maketh againſt them. It extendeth not alſo to any ſuit, where the demand is under the value of forty pounds; for that in ſuch caſes of petty value it would not quit the charge, to go about again.

There was another law made againſt a branch of ingratitude in women, who having been advanced by their huſbands, or their huſbands anceſtors, ſhould alien, and thereby ſeek to defeat the heirs, or thoſe in remainder, of the lands, whereunto they had been ſo advanced. The remedy was, by giving power to the next, to enter for a forfeiture.

There was alſo enacted that charitable law, for the admiſſion of poor ſuitors *in forma pauperis*, without fee to counſellor, attorney, or clerk, whereby poor men became rather able to vex, than unable to ſue. There were divers other good laws made that parliament, as we ſaid before: but we ſtill obſerve our manner, in ſelecting out thoſe, that are not of a vulgar nature.

The King this while, though he ſat in parliament, as in full peace, and ſeemed to account of the deſigns of Perkin (who was now returned into Flanders) but as a may-game; yet having the compoſition of a wiſe King (ſtout without, and apprehenſive within) had given order for the watching of beacons upon the coaſts, and erecting more where they ſtood too thin, and had a careful eye where this wandering cloud would break. But Perkin, adviſed to keep his fire (which hitherto burned as it were upon green wood) alive with continual blowing; ſailed again into Ireland, whence he had formerly departed, rather upon the hopes of France, than upon any unreadineſs or diſcouragement he found in that people. But in the ſpace of time between, the King's diligence and Poynings's commiſſion had ſo ſettled things there, as there was nothing left for Perkin, but the bluſtering affection of wild and naked people. Wherefore he was adviſed by his council, to ſeek aid of the King of Scotland, a Prince young and valorous, and in good terms with his nobles and people, and ill affected to King Henry. At this time alſo both Maximilian and Charles of France began to bear no good will to the King: the one being diſpleaſed with the King's prohibition of commerce with Flanders; the other holding the King for ſuſpect, in regard of his late entry into league with the Italians. Wherefore, beſides the open aids of the dutcheſs of Burgundy, which did with ſails and oars put on and advance Perkin's deſigns, there wanted not ſome ſecret tides from Maximilian and Charles, which did further his fortunes: inſomuch as they, both by their ſecret letters and meſſages, recommended him to the King of Scotland.

Perkin therefore coming into Scotland upon thoſe hopes, with a well-appointed company, was by the King of Scots (being formerly well prepared) honourably welcomed, and ſoon after his arrival admitted to his preſence, in a ſolemn manner: for the King received him in ſtate in his chamber of preſence, accompanied with divers of his nobles. And Perkin well attended, as well with thoſe that the King had ſent before him, as with his own train, entered the room where the King was, and coming near to the King, and bowing a little to embrace him, he retired ſome paces back, and with a loud voice (that all that were preſent might hear him) made his declaration in this manner:

"HIGH and mighty King, your grace, and theſe your nobles here pre-
"ſent, may be pleaſed benignly to bow your ears, to hear the tragedy of a
"young man, that by right ought to hold in his hand the ball of a kingdom;
"but by fortune is made himſelf a ball, toſſed from miſery to miſery, and from
"place to place. You ſee here before you the ſpectacle of a Plantagenet, who
"hath been carried from the nurſery to the ſanctuary; from the ſanctuary, to
"the direful priſon; from the priſon, to the hand of the cruel tormentor; and

" from that hand to the wide wilderneſs (as I may truly call it) for ſo the " world hath been to me. So that he that is born to a great kingdom, hath " not ground to ſet his foot upon, more than this where he now ſtandeth by " your princely favour. Edward the fourth, late King of England (as your " grace cannot but have heard) left two ſons, Edward, and Richard duke of " York, both very young. Edward the eldeſt ſucceeded their father in the " crown, by the name of King Edward the fifth: but Richard duke of Glou- " ceſter, their unnatural uncle, firſt thirſting after the kingdom, through am- " bition, and afterwards thirſting for their blood, out of deſire to ſecure him- " ſelf, employed an inſtrument of his (confident to him, as he thought) to " murther them both. But this man that was employed to execute that exe- " crable tragedy, having cruelly ſlain King Edward, the eldeſt of the two, was " moved partly by remorſe, and partly by ſome other mean, to ſave Richard " his brother; making a report nevertheleſs to the tyrant, that he had performed " his commandment for both brethren. This report was accordingly believed, " and publiſhed generally: ſo that the world hath been poſſeſſed of an opinion, " that they both were barbarouſly made away; though even truth hath ſome " ſparks that fly abroad, until it appear in due time, as this hath had. But " Almighty God, that ſtopped the mouth of the lion, and ſaved little Joaſh " from the tyranny of Athaliah, when ſhe maſſacred the King's children; and " did ſave Iſaac, when the hand was ſtretched forth to ſacrifice him; preſerved " the ſecond brother. For I myſelf, that ſtand here in your preſence, am that " very Richard duke of York, brother of that unfortunate Prince King Edward " the fifth, now the moſt rightful ſurviving heir male to that victorious and " moſt noble Edward, of that name the fourth, late King of England. For " the manner of my eſcape, it is fit it ſhould paſs in ſilence, or (at leaſt) in " a more ſecret relation; for that it may concern ſome alive, and the memory " of ſome that are dead. Let it ſuffice to think, that I had then a mother " living, a Queen, and one that expected daily ſuch a commandment from " the tyrant, for the murthering of her children. Thus in my tender age " eſcaping by God's mercy out of London, I was ſecretly conveyed over ſea; " where, after a time, the party that had me in charge (upon what new " fears, change of mind, or practice, God knoweth) ſuddenly forſook me. " Whereby I was forced to wander abroad, and to ſeek mean conditions for the " ſuſtaining of my life. Wherefore diſtracted between ſeveral paſſions, the " one of fear to be known, leſt the tyrant ſhould have a new attempt upon me; " the other of grief and diſdain to be unknown, and to live in that baſe and " ſervile manner that I did; I reſolved with myſelf to expect the tyrant's death, " and then to put myſelf into my ſiſter's hands, who was next heir to the crown. " But in this ſeaſon it happened one Henry Tudor, ſon to Edmund Tudor " earl of Richmond, to come from France and enter into the realm, and by " ſubtile and foul means to obtain the crown of the ſame, which to me right- " fully appertained: ſo that it was but a change from tyrant to tyrant. This " Henry, my extreme and mortal enemy, ſo ſoon as he had knowledge of my " being alive, imagined and wrought all the ſubtile ways and means he could, " to procure my final deſtruction: for my mortal enemy hath not only falſly " ſurmiſed me to be a feigned perſon, giving me nick-names, ſo abuſing the " world; but alſo, to defer and put me from entry into England, hath offered " large ſums of money to corrupt the Princes and their miniſters, with whom " I have been retained; and made importune labours to certain ſervants about " my perſon, to murther or poiſon me, and others to forſake and leave my " righteous quarrel, and to depart from my ſervice, as Sir Robert Clifford, and " others. So that every man of reaſon may well perceive, that Henry, calling " himſelf King of England, needed not to have beſtowed ſuch great ſums of " treaſure, nor ſo to have buſied himſelf with importune and inceſſant labour " and induſtry, to compaſs my death and ruin, if I had been ſuch a feigned " perſon. But the truth of my cauſe being ſo manifeſt, moved the moſt Chri- " ſtian King Charles, and the lady dutcheſs dowager of Burgundy my moſt " dear aunt, not only to acknowledge the truth thereof, but lovingly to aſſiſt me.

" But

"But it ſeemeth that God above (for the good of this whole iſland, and the "knitting of theſe two kingdoms of England and Scotland in a ſtrait concord "and amity, by ſo great an obligation) hath reſerved the placing of me in "the imperial throne of England for the arms and ſuccours of your grace. "Neither is it the firſt time that a King of Scotland hath ſupported them that "were bereft and ſpoiled of the kingdom of England, as of late (in freſh me- "mory) it was done in the perſon of Henry the ſixth. Wherefore, for that "your grace hath given clear ſigns, that you are in no noble quality inferior "to your royal anceſtors; I, ſo diſtreſſed a Prince, was hereby moved to come "and put myſelf into your royal hands, deſiring your aſſiſtance to recover my "kingdom of England; promiſing faithfully to bear myſelf towards your grace "no otherwiſe, than if I were your own natural brother; and will, upon the "recovery of mine inheritance, gratefully do you all the pleaſure that is in my "utmoſt power."

After Perkin had told his tale, King James anſwered bravely and wiſely; "That whatſoever he were, he ſhould not repent him of putting himſelf into his "hands." And from that time forth, though there wanted not ſome about him, that would have perſuaded him, that all was but an illuſion; yet notwithſtanding, either taken by Perkin's amiable and alluring behaviour, or inclining to the recommendation of the great Princes abroad, or willing to take an occaſion of a war againſt King Henry, he entertained him in all things, as became the perſon of Richard duke of York; embraced his quarrel; and (the more to put it out of doubt, that he took him to be a great Prince, and not a repreſentation only) he gave conſent, that this duke ſhould take to wife the lady Katherine Gordon, daughter to the earl of Huntley, being a near kinſwoman to the King himſelf, and a young virgin of excellent beauty and virtue.

Not long after, the King of Scots in perſon, with Perkin in his company, entered with a great army (though it conſiſted chiefly of borderers, being raiſed ſomewhat ſuddenly) into Northumberland. And Perkin, for a perfume before him as he went, cauſed to be publiſhed a proclamation * of this tenor following, in the name of Richard duke of York, true inheritor of the crown of England.

"IT hath pleaſed God, who putteth down the mighty from their ſeat, and "exalteth the humble, and ſuffereth not the hopes of the juſt to periſh in the "end, to give us means at the length to ſhew ourſelves armed unto our lieges "and people of England. But far be it from us to intend their hurt or da- "mage, or to make war upon them, otherwiſe than to deliver ourſelf and them "from tyranny and oppreſſion. For our mortal enemy Henry Tudor, a falſe "uſurper of the crown of England (which to us by natural and lineal right "appertaineth) knowing in his own heart our undoubted right (we being the "very Richard duke of York, younger ſon, and now ſurviving heir male of "the noble and victorious Edward the fourth, late King of England) hath not "only deprived us of our kingdom, but likewiſe by all foul and wicked means "ſought to betray us, and bereave us of our life. Yet if his tyranny only ex- "tended itſelf to our perſon (although our royal blood teacheth us to be ſen- "ſible of injuries) it ſhould be leſs to our grief. But this Tudor, who boaſteth "himſelf to have overthrown a tyrant, hath, ever ſince his firſt entrance into "his uſurped reign, put little in practice, but tyranny and the feats thereof.

"For King Richard, our unnatural uncle, although deſire of rule did blind "him, yet in his other actions (like a true Plantagenet) was noble, and loved "the honour of the realm, and the contentment and comfort of his nobles "and people. But this our mortal enemy (agreeable to the meanneſs of his "birth) hath trodden under foot the honour of this nation; ſelling our beſt "confederates for money, and making merchandize of the blood, eſtates, and "fortunes of our peers and ſubjects, by feigned wars, and diſhonourable peace, "only to enrich his coffers. Nor unlike hath been his hateful miſgovernment, "and evil deportments at home. Firſt, he hath (to fortify his falſe quarrel)

* The original of this proclamation remaineth with Sir Robert Cotton, a worthy preſerver and treaſurer of rare antiquities: from whoſe manuſcripts I have had much light for the furniſhing of this work.

cauſed

" cauſed divers nobles of this our realm (whom he held ſuſpect and ſtood in " dread of) to be cruelly murdered; as our couſin Sir William Stanley, lord " chamberlain, Sir Simon Mountfort, Sir Robert Ratcliffe, William D'Aubigny, " Humphrey Stafford, and many others; beſides ſuch as have dearly bought " their lives with intolerable ranſoms: ſome of which nobles are now in the " ſanctuary. Alſo he hath long kept, and yet keepeth in priſon, our right " entirely well-beloved couſin, Edward, ſon and heir to our uncle duke of " Clarence, and others; with-holding from them their rightful inheritance, to " the intent they ſhould never be of might and power, to aid and aſſiſt us at " our need, after the duty of their legiances. He alſo married by compulſion " certain of our ſiſters, and alſo the ſiſter of our ſaid couſin the earl of Warwick, " and divers other ladies of the royal blood, unto certain of his kinſmen and " friends of ſimple and low degree; and, putting apart all well-diſpoſed nobles, " he hath none in favour and truſt about his perſon, but biſhop Fox, Smith, " Bray, Lovel, Oliver King, David Owen, Riſeley, Turbervile, Tiler, Chomley, " Empſon, James Hobart, John Cut, Garth, Henry Wyat, and ſuch other caitifs " and villains of birth, which by ſubtile inventions, and pilling of the people, " have been the principal finders, occaſioners, and counſellors of the miſrule " and miſchief now reigning in England.

" We remembering theſe premiſſes, with the great and execrable offences " daily committed, and done by our foreſaid great enemy, and his adherents, " in breaking the liberties and franchiſes of our mother the holy church, upon " pretences of wicked and heatheniſh policy, to the high diſpleaſure of Al- " mighty God, beſides the manifold treaſons, abominable murders, manſlaughters, " robberies, extortions, the daily pilling of the people by diſmes, taxes, tallages, " benevolences, and other unlawful impoſitions, and grievous exactions, with " many other heinous effects, to the likely deſtruction and deſolation of the " whole realm: ſhall by God's grace, and the help and aſſiſtance of the great " lords of our blood, with the counſel of other ſad perſons, ſee that the com- " modities of our realm be employed to the moſt advantage of the ſame; the " intercourſe of merchandiſe betwixt realm and realm to be miniſtered and " handled as ſhall more be to the common weal and proſperity of our ſubjects; " and all ſuch diſmes, taxes, tallages, benevolences, unlawful impoſitions, and " grievous exactions, as be above rehearſed, to be foredone and laid apart, and " never from henceforth to be called upon, but in ſuch caſes as our noble " progenitors, Kings of England, have of old time been accuſtomed to have " the aid, ſuccour, and help of their ſubjects, and true liege-men.

" And farther, we do, out of our grace and clemency, hereby as well publiſh " and promiſe to all our ſubjects remiſſion and free pardon of all by-paſt offences " whatſoever, againſt our perſon or eſtate, in adhering to our ſaid enemy, by " whom (we know well) they have been miſled, if they ſhall within time " convenient ſubmit themſelves unto us. And for ſuch as ſhall come with the " foremoſt to aſſiſt our righteous quarrel, we ſhall make them ſo far partakers " of our princely favour and bounty, as ſhall be highly for the comfort of them " and theirs, both during their life, and after their death: as alſo we ſhall, " by all means which God ſhall put into our hands, demean ourſelves to give " royal contentment to all degrees and eſtates of our people, maintaining the " liberties of holy church in their entire, preſerving the honours, privileges, " and preheminences of our nobles, from contempt or diſparagement, according " to the dignity of their blood. We ſhall alſo unyoke our people from all " heavy burdens and endurances, and confirm our cities, boroughs, and towns, " in their charters and freedoms, with enlargement where it ſhall be deſerved; " and in all points give our ſubjects cauſe to think, that the bleſſed and debonair " government of our noble father King Edward (in his laſt times) is in us revived.

" And foraſmuch as the putting to death, or taking alive of our ſaid mortal " enemy, may be a mean to ſtay much effuſion of blood, which otherwiſe may " enſue, if by compulſion or fair promiſes he ſhall draw after him any number " of our ſubjects to reſiſt us, which we deſire to avoid (though we be certainly " informed, that our ſaid enemy is purpoſed and prepared to fly the land, having

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"already made over great maſſes of the treaſure of our crown, the better to "ſupport him in foreign parts) we do hereby declare, that whoſoever ſhall take "or diſtreſs our ſaid enemy (though the party be of never ſo mean a condition) "he ſhall be by us rewarded with a thouſand pound in money, forthwith to "be laid down to him, and an hundred marks by the year of inheritance; "beſides that he may otherwiſe merit, both toward God, and all good people, "for the deſtruction of ſuch a tyrant.

"Laſtly, we do all men to wit, and herein we take alſo God to witneſs, that "whereas God hath moved the heart of our deareſt couſin, the King of "Scotland, to aid us in perſon in this our righteous quarrel; it is altogether "without any pact or promiſe, or ſo much as demand of any thing that may "prejudice our crown or ſubjects: but contrariwiſe, with promiſe on our ſaid "couſin's part, that whenſoever he ſhall find us in ſufficient ſtrength to get the "upper hand of our enemy (which we hope will be very ſuddenly) he will "forthwith peaceably return into his own kingdom; contenting himſelf only "with the glory of ſo honourable an enterprize, and our true and faithful "love and amity: which we ſhall ever (by the grace of Almighty God) ſo "order, as ſhall be to the great comfort of both kingdoms."

But Perkin's proclamation did little edify with the people of England; neither was he the better welcome for the company he came in. Wherefore the King of Scotland ſeeing none came in to Perkin, nor none ſtirred any where in his favour, turned his enterprize into a rode; and waſted and deſtroyed the country of Northumberland with fire and ſword. But hearing that there were forces coming againſt him, and not willing that they ſhould find his men heavy and laden with booty, he returned into Scotland with great ſpoils, deferring farther proſecution till another time. It is ſaid, that Perkin acting the part of a Prince handſomely, when he ſaw the Scotiſh fell to waſte the country, came to the King in a paſſionate manner, making great lamentation, and deſired, that that might not be the manner of making the war; for that no crown was ſo dear to his mind, as that he deſired to purchaſe it with the blood and ruin of his country. Whereunto the King anſwered half in ſport, that he doubted much he was careful for that, that was none of his, and that he ſhould be too good a ſteward for his enemy, to ſave the country to his uſe.

By this time, being the eleventh year of the King, the interruption of trade between the Engliſh and the Flemiſh began to pinch the merchants of both nations very ſore: which moved them by all means they could deviſe, to affect and diſpoſe their ſovereigns reſpectively, to open the intercourſe again; wherein time favoured them. For the archduke and his council began to ſee, that Perkin would prove but a runagate, and citizen of the world; and that it was the part of children to fall out about babies. And the King on his part, after the attempts upon Kent and Northumberland, began to have the buſineſs of Perkin in leſs eſtimation; ſo as he did not put it to account in any conſultation of ſtate. But that that moved him moſt, was, that being a King that loved wealth and treaſure, he could not endure to have trade ſick, nor any obſtruction to continue in the gate-vein, which diſperſeth that blood. And yet he kept ſtate ſo far, as firſt to be ſought unto. Wherein the merchant-adventurers likewiſe (being a ſtrong company at that time, and well underſet with rich men, and good order) did hold out bravely; taking off the commodities of the kingdom, though they lay dead upon their hands for want of vent. At the laſt, commiſſioners met at London to treat: on the King's part, biſhop Fox lord privy ſeal, viſcount Wells, Kendal prior of ſaint John's, Warham maſter of the rolls, who began to gain much upon the King's opinion; Urſwick, who was almoſt ever one; and Riſeley: on the archduke's part, the lord Bevers his admiral, the lord Verunſel preſident of Flanders, and others. Theſe concluded a perfect treaty, both of amity and intercourſe, between the King and the archduke; containing articles both of ſtate, commerce, and free fiſhing. This is that treaty which the Flemings call at this day *intercurſus magnus*; both becauſe it is more complete than the precedent treaties of the third and fourth year of the King; and chiefly, to give it a difference from the treaty that followed in the one and

twentieth year of the King, which they call *intercursus malus*. In this treaty, there was an expreſs article againſt the reception of the rebels of either Prince by other; purporting, That if any ſuch rebel ſhould be required, by the Prince whoſe rebel he was, of the Prince confederate, that forthwith the Prince confederate ſhould by proclamation command him to avoid the country: which if he did not within fifteen days, the rebel was to ſtand proſcribed, and put out of protection. But nevertheleſs in this article Perkin was not named, neither perhaps contained, becauſe he was no rebel. But by this means his wings were clipt of his followers that were Engliſh. And it was expreſly compriſed in the treaty, that it ſhould extend to the territories of the dutcheſs dowager. After the intercourſe thus reſtored, the Engliſh merchants came again to their manſion at Antwerp, where they were received with proceſſion and great joy.

The winter following, being the twelfth year of his reign, the King called again his parliament; where he did much exaggerate both the malice, and the cruel predatory war lately made by the King of Scotland: That that King, being in amity with him, and no ways provoked, ſhould ſo burn in hatred towards him, as to drink of the lees and dregs of Perkin's intoxication, who was every where elſe detected and diſcarded: and that when he perceived it was out of his reach to do the King any hurt, he had turned his arms upon unarmed and unprovided people, to ſpoil only and depopulate, contrary to the laws both of war and peace: concluding, that he could neither with honour, nor with the ſafety of his people, to whom he did owe protection, let paſs theſe wrongs unrevenged. The parliament underſtood him well, and gave him a ſubſidy, limited to the ſum of one hundred and twenty thouſand pounds, beſides two fifteens: for his wars were always to him as a mine of treaſure, of a ſtrange kind of ore; iron at the top, and gold and ſilver at the bottom. At this parliament (for that there had been ſo much time ſpent in making laws the year before, and for that it was called purpoſely in reſpect of the Scotiſh war) there were no laws made to be remembered. Only there paſſed a law, at the ſuit of the merchant-adventurers of England, againſt the merchant-adventurers of London, for monopolizing and exacting upon the trade: which it ſeemeth they did a little to ſave themſelves, after the hard time they had ſuſtained by want of trade. But thoſe innovations were taken away by parliament.

But it was fatal to the King to fight for his money; and though he avoided to fight with enemies abroad, yet he was ſtill enforced to fight for it with rebels at home: for no ſooner began the ſubſidy to be levied in Cornwal, but the people there began to grudge and murmur. The Corniſh being a race of men, ſtout of ſtomach, mighty of body and limb, and that lived hardly in a barren country, and many of them could (for a need) live under ground, that were tinners. They muttered extremely, that it was a thing not to be ſuffered, that for a little ſtir of the Scots, ſoon blown over, they ſhould be thus grinded to powder with payments: and ſaid it was for them to pay that had too much, and lived idly. But they would eat their bread that they got with the ſweat of their brows, and no man ſhould take it from them. And as in the tides of people once up, there want not commonly ſtirring winds to make them more rough; ſo this people did light upon two ringleaders, or captains of the rout. The one was Michael Joſeph, a blackſmith or farrier of Bodmin, a notable talking fellow, and no leſs deſirous to be talked of. The other was Thomas Flammock, a lawyer, who by telling his neighbours commonly upon any occaſion, that the law was on their ſide, had gotten great ſway amongſt them. This man talked learnedly, and as if he could tell how to make a rebellion, and never break the peace. He told the people, that ſubſidies were not to be granted, nor levied in this caſe; that is, for wars of Scotland: for that the law had provided another courſe, by ſervice of eſcuage, for thoſe journeys; much leſs when all was quiet, and war was made but a pretence to poll and pill the people. And therefore that it was good they ſhould not ſtand now like ſheep before the ſhearers, but put on harneſs, and take weapons in their hands. Yet to do no creature hurt; but go and deliver the King a ſtrong petition, for the laying down of thoſe grievous payments, and for the puniſhment of thoſe

that had given him that counſel; to make others beware how they did the like in time to come. And ſaid, for his part he did not ſee how they could do the duty of true Engliſhmen, and good liege-men, except they did deliver the King from ſuch wicked ones, that would deſtroy both him and the country. Their aim was at archbiſhop Morton, and Sir Reginald Bray, who were the King's ſkreens in this envy.

After that theſe two, Flammock and the blackſmith, had by joint and ſeveral pratings, found tokens of conſent in the multitude, they offered themſelves to lead them, until they ſhould hear of better men to be their leaders, which they ſaid would be ere long: telling them farther, that they would be but their ſervants, and firſt in every danger; but doubted not but to make both the weſt-end and the eaſt-end of England to meet in ſo good a quarrel; and that all (rightly underſtood) was but for the King's ſervice. The people upon theſe ſeditious inſtigations, did arm (moſt of them with bows, and arrows, and bills, and ſuch other weapons of rude and country people) and forthwith under the command of their leaders (which in ſuch caſes is ever at pleaſure) marched out of Cornwal through Devonſhire, unto Taunton in Somerſetſhire, without any ſlaughter, violence, or ſpoil of the country. At Taunton they killed in fury an officious and eager commiſſioner for the ſubſidy, whom they called the provoſt of Perin. Thence they marched to Wells, where the lord Audley (with whom their leaders had before ſome ſecret intelligence) a nobleman of an ancient family, but unquiet and popular, and aſpiring to ruin, came in to them, and was by them (with great gladneſs and cries of joy) accepted as their general; they being now proud that they were led by a nobleman. The lord Audley led them on from Wells to Saliſbury, and from Saliſbury to Wincheſter. Thence the fooliſh people, who (in effect) led their leaders, had a mind to be led into Kent, fancying that the people there would join with them; contrary to all reaſon or judgment, conſidering the Kentiſh men had ſhewed great loyalty and affection to the King ſo lately before. But the rude people had heard Flammock ſay, that Kent was never conquered, and that they were the freeſt people of England. And upon theſe vain noiſes, they looked for great matters at their hands, in a cauſe which they conceited to be for the liberty of the ſubject. But when they were come into Kent, the country was ſo well ſettled, both by the King's late kind uſage towards them, and by the credit and power of the earl of Kent, the lord Abergavenny, and the lord Cobham, as neither gentleman nor yeoman came in to their aid; which did much damp and diſmay many of the ſimpler ſort; inſomuch as divers of them did ſecretly fly from the army, and went home: but the ſturdier ſort, and thoſe that were moſt engaged, ſtood by it, and rather waxed proud, than failed in hopes and courage. For as it did ſomewhat appall them, that the people came not in to them; ſo it did no leſs encourage them, that the King's forces had not ſet upon them, having marched from the weſt unto the eaſt of England. Wherefore they kept on their way, and encamped upon Blackheath, between Greenwich and Eltham; threatening either to bid battle to the King (for now the ſeas went higher than to Morton and Bray) or to take London within his view; imagining with themſelves, there to find no leſs fear than wealth.

But to return to the King. When firſt he heard of this commotion of the Corniſh men occaſioned by the ſubſidy, he was much troubled therewith; not for itſelf, but in regard of the concurrence of other dangers that did hang over him at that time. For he doubted leſt a war from Scotland, a rebellion from Cornwal, and the practices and conſpiracies of Perkin and his partakers, would come upon him at once: knowing well, that it was a dangerous triplicity to a monarchy, to have the arms of a foreigner, the diſcontents of ſubjects, and the title of a pretender to meet. Nevertheleſs the occaſion took him in ſome part well provided. For as ſoon as the parliament had broken up, the King had preſently raiſed a puiſſant army to war upon Scotland. And King James of Scotland likewiſe, on his part, had made great preparations, either for defence, or for new aſſailing of England. But as for the King's

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forces, they were not only in preparation, but in readineſs preſently to ſet forth, under the conduct of D'Aubigney the lord chamberlain. But as ſoon as the King underſtood of the rebellion of Cornwal, he ſtayed thoſe forces, retaining them for his own ſervice and ſafety. But therewithal he diſpatched the earl of Surry into the north, for the defence and ſtrength of thoſe parts, in caſe the Scots ſhould ſtir. But for the courſe he held towards the rebels, it was utterly differing from his former cuſtom and practice; which was ever full of forwardneſs and celerity to make head againſt them, or to ſet upon them as ſoon as ever they were in action. This he was wont to do. But now, beſides that he was attempered by years, and leſs in love with dangers, by the continued fruition of a crown; it was a time when the various appearance to his thoughts of perils of ſeveral natures, and from divers parts, did make him judge it his beſt and ſureſt way, to keep his ſtrength together in the ſeat and center of his kingdom: according to the ancient Indian emblem, in ſuch a ſwelling ſeaſon, to hold the hand upon the middle of the bladder, that no ſide might riſe. Beſides, there was no neceſſity put upon him to alter his counſel. For neither did the rebels ſpoil the country, in which caſe it had been diſhonour to abandon his people: neither on the other ſide did their forces gather or increaſe, which might haſten him to precipitate and aſſail them before they grew too ſtrong. And laſtly, both reaſon of eſtate and war ſeemed to agree with this courſe: for that inſurrections of baſe people are commonly more furious in their beginnings. And by this means alſo he had them the more at vantage, being tired and harraſſed with a long march; and more at mercy, being cut off far from their country, and therefore not able by any ſudden flight to get to retreat, and to renew the troubles.

When therefore the rebels were encamped on Blackheath upon the hill, whence they might behold the city of London, and the fair valley about it; the King knowing well, that it ſtood him upon, by how much the more he had hitherto protracted the time in not encountering them, by ſo much the ſooner to diſpatch with them, that it might appear to have been no coldneſs in fore-ſlowing, but wiſdom in chuſing his time; reſolved with all ſpeed to aſſail them, and yet with that providence and ſurety, as ſhould leave little to venture or fortune. And having very great and puiſſant forces about him, the better to maſter all events and accidents, he divided them into three parts; the firſt was led by the earl of Oxford in chief, aſſiſted by the earls of Eſſex and Suffolk. Theſe noblemen were appointed, with ſome cornets of horſe, and bands of foot, and good ſtore of artillery, wheeling about to put themſelves beyond the hill where the rebels were encamped; and to beſet all the ſkirts and deſcents thereof, except thoſe that lay towards London; thereby to have theſe wild beaſts (as it were) in a toil. The ſecond part of his forces (which were thoſe that were to be moſt in action, and upon which he relied moſt for the fortune of the day) he did aſſign to be led by the lord chamberlain, who was appointed to ſet upon the rebels in front, from that ſide which is toward London. The third part of his forces (being likewiſe great and brave forces) he retained about himſelf, to be ready upon all events to reſtore the fight, or conſummate the victory; and mean while to ſecure the city. And for that purpoſe he encamped in perſon in ſaint George's fields, putting himſelf between the city and the rebels. But the city of London (eſpecially at the firſt) upon the near encamping of the rebels, was in great tumult: as it uſeth to be with wealthy and populous cities (eſpecially thoſe which for greatneſs and fortune are queens of their regions) who ſeldom ſee out of their windows, or from their towers, an army of enemies. But that which troubled them moſt, was the conceit, that they dealt with a rout of people, with whom there was no compoſition or condition, or orderly treating, if need were; but likely to be bent altogether upon rapine and ſpoil. And although they had heard that the rebels had behaved themſelves quietly and modeſtly by the way as they went; yet they doubted much that would not laſt, but rather make them more hungry, and more in appetite to fall upon ſpoil in the end. Wherefore there was great running to and fro of people, ſome to the gates, ſome

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to the walls, ſome to the water-ſide; giving themſelves alarms and pannick fears continually. Nevertheleſs both Tate, the lord mayor, and Shaw and Haddon, the ſheriffs, did their parts ſtoutly and well, in arming and ordering the people. And the king likewiſe did adjoin ſome captains of experience in the wars, to adviſe and aſſiſt the citizens. But ſoon after, when they underſtood that the king had ſo ordered the matter, that the rebels muſt win three battles, before they could approach the city, and that he had put his own perſon between the rebels and them, and that the great care was, rather how to impound the rebels that none of them might eſcape, than that any doubt was made to vanquiſh them; they grew to be quiet and out of fear; the rather, for the confidence they repoſed (which was not ſmall) in the three leaders, Oxford, Eſſex, and D'Aubigny; all men well famed and loved amongſt the people. As for Jaſper duke of Bedford, whom the king uſed to employ with the firſt in his wars, he was then ſick, and died ſoon after.

It was the two and twentieth of June, and a Saturday (which was the day of the week the king fancied) when the battle was fought; though the king had, by all the art he could deviſe, given out a falſe day, as if he prepared to give the rebels battle on the Monday following, the better to find them unprovided, and in diſarray. The lords that were appointed to circle the hill, had ſome days before planted themſelves (as at the receit) in places convenient. In the afternoon, towards the decline of the day (which was done, the better to keep the rebels in opinion that they ſhould not fight that day) the lord D'Aubigny marched on towards them, and firſt beat ſome troops of them from Deptford-bridge, where they fought manfully; but, being in no great number, were ſoon driven back, and fled up to their main army upon the hill. The army at that time, hearing of the approach of the king's forces, were putting themſelves in array, not without much confuſion. But neither had they placed upon the firſt high ground towards the bridge, any forces to ſecond the troops below, that kept the bridge; neither had they brought forwards their main battle (which ſtood in array far into the heath) near to the aſcent of the hill. So that the earl with his forces mounted the hill, and recovered the plain, without reſiſtance. The lord D'Aubigny charged them with great fury; inſomuch as it had like (by accident) to have brandled the fortune of the day: for, by inconſiderate forwardneſs in fighting in the head of his troops, he was taken by the rebels, but immediately reſcued and delivered. The rebels maintained the fight for a ſmall time, and for their perſons ſhewed no want of courage; but being ill armed, and ill led, and without horſe or artillery, they were with no great difficulty cut in pieces, and put to flight. And for their three leaders, the lord Audley, the blackſmith, and Flammock (as commonly the captains of commotions are but half-couraged men) ſuffered themſelves to be taken alive. The number ſlain on the rebels part were ſome two thouſand men; their army amounting (as it is ſaid) unto the number of ſixteen thouſand. The reſt were (in effect) all taken; for that the hill (as was ſaid) was encompaſſed with the king's forces round about. On the king's part there died about three hundred, moſt of them ſhot with arrows, which were reported to be of the length of a taylor's yard; ſo ſtrong and mighty a bow the Corniſh-men were ſaid to draw.

The victory thus obtained, the king created divers bannerets, as well upon Blackheath, where his lieutenant had won the field (whither he rode in perſon to perform the ſaid creation) as in St. George's Fields, where his own perſon had been encamped. And for matter of liberality, he did (by open edict) give the goods of all the priſoners unto thoſe that had taken them; either to take them in kind, or compound for them, as they could. After matter of honour and liberality, followed matter of ſeverity and execution. The lord Audley was led from Newgate to Tower-Hill, in a paper coat painted with his own arms; the arms reverſed, the coat torn, and he at Tower-Hill beheaded. Flammock and the blackſmith were hanged, drawn, and quartered at Tyburn: the blackſmith taking pleaſure upon the hurdle (as it ſeemeth by words that he uttered) to think that he ſhould be famous in after-times. The king was once in mind to have ſent down Flammock and the blackſmith to have been executed in Cornwall, for the

more terror: but being advertiſed that the country was yet unquiet and boiling, he thought better not to irritate the people farther. All the reſt were pardoned by proclamation, and to take out their pardons under ſeal, as many as would. So that, more than the blood drawn in the field, the king did ſatisfy himſelf with the lives of only three offenders, for the expiation of this great rebellion.

It was a ſtrange thing to obſerve the variety and inequality of the king's executions and pardons: and a man would think it, at the firſt, a kind of lottery or chance. But, looking into it more nearly, one ſhall find there was reaſon for it, much more, perhaps, than after ſo long a diſtance of time, we can now diſcern. In the Kentiſh commotion (which was but an handful of men) there were executed to the number of one hundred and fifty: and in this ſo mighty a rebellion but three. Whether it were that the king put to account the men that were ſlain in the field, or that he was not willing to be ſevere in a popular cauſe, or that the harmleſs behaviour of this people (that came from the weſt of England to the eaſt, without miſchief almoſt, or ſpoil of the country) did ſomewhat mollify him, and move him to compaſſion; or laſtly, that he made a great difference between people that did rebel upon wantonneſs, and them that did rebel upon want.

After the Corniſh-men were defeated, there came from Calais to the king an honourable embaſſage from the French king, which had arrived at Calais a month before, and there was ſtayed in reſpect of the troubles, but honourably entertained and defrayed. The king, at their firſt coming, ſent unto them, and prayed them to have patience, till a little ſmoak, that was raiſed in his country, were over, which would ſoon be: Slighting (as his manner was) that openly, which nevertheleſs he intended ſeriouſly.

This embaſſage concerned no great affair, but only the prolongation of days for payment of moneys, and ſome other particulars of the frontiers. And it was (indeed) but a wooing embaſſage, with good reſpects to entertain the king in good affection; but nothing was done, or handled, to the derogation of the king's late treaty with the Italians.

But during the time that the Corniſh-men were in their march towards London, the king of Scotland (well advertiſed of all that paſſed, and knowing himſelf ſure of war from England, whenſoever thoſe ſtirs were appeaſed) neglected not his opportunity; but, thinking the king had his hands full, entered the frontiers of England again with an army, and beſieged the caſtle of Norham in perſon, with part of his forces, ſending the reſt to forage the country. But Fox biſhop of Dureſme (a wiſe man, and one that could ſee through the preſent to the future) doubting as much before, had cauſed his caſtle of Norham to be ſtrongly fortified, and furniſhed with all kind of munition: and had manned it likewiſe with a very great number of tall ſoldiers, more than for the proportion of the caſtle, reckoning rather upon a ſharp aſſault, than a long ſiege. And for the country likewiſe, he had cauſed the people to withdraw their cattle and goods into faſt places, that were not of eaſy approach; and ſent in poſt to the earl of Surrey (who was not far off, in Yorkſhire) to come in diligence to the ſuccour. So as the Scotiſh king both failed of doing good upon the caſtle, and his men had but a catching harveſt of their ſpoils: and when he underſtood that the earl of Surrey was coming on with great forces, he returned back into Scotland. The earl, finding the caſtle freed, and the enemy retired, purſued with all celerity into Scotland, hoping to have overtaken the Scotiſh king, and to have given him battle; but, not attaining him in time, ſat down before the caſtle of Aton, one of the ſtrongeſt places (then eſteemed) between Berwick and Edinburgh, which in a ſmall time he took. And ſoon after, the Scotiſh king retiring farther into his country, and the weather being extraordinary foul and ſtormy, the earl returned into England. So that the expeditions on both parts were (in effect) but a caſtle taken, and a caſtle diſtreſſed; not anſwerable to the puiſſance of the forces, nor to the heat of the quarrel, nor to the greatneſs of the expectation.

Amongſt theſe troubles, both civil and external, came into England from Spain, Peter Hialas, ſome call him Elias (ſurely he was the forerunner of the good hap that we enjoy at this day: for his embaſſage ſet the truce between Eng-

land and Scotland; the truce drew on the peace; the peace the marriage; and the marriage the union of the kingdoms) a man of great wiſdom, and (as thoſe times were) not unlearned; ſent from Ferdinando and Iſabella, kings of Spain, unto the king, to treat a marriage between Katherine, their ſecond daughter, and prince Arthur. This treaty was by him ſet in a very good way, and almoſt brought to perfection. But it ſo fell out by the way, that upon ſome conference which he had with the king touching this buſineſs, the king (who had a great dexterity in getting ſuddenly into the boſom of embaſſadors of foreign princes, if he liked the men; inſomuch as he would many times communicate with them of his own affairs, yea, and employ them in his ſervice) fell into ſpeech and diſcourſe incidently, concerning the ending of the debates and differences with Scotland. For the king naturally did not love the barren wars with Scotland, though he made his profit of the noiſe of them. And he wanted not in the council of Scotland, thoſe that would adviſe their king to meet him at the half way, and to give over the war with England; pretending to be good patriots, but indeed favouring the affairs of the king. Only his heart was too great to begin with Scotland for the motion of peace. On the other ſide, he had met with an ally of Ferdinando of Arragon, as fit for his turn as could be. For after that king Ferdinando had, upon aſſured confidence of the marriage to ſucceed, taken upon him the perſon of a fraternal ally to the king, he would not let (in a Spaniſh gravity) to counſel the king in his own affairs. And the king on his part, not being wanting to himſelf, but making uſe of every man's humours, made his advantage of this in ſuch things as he thought either not decent, or not pleaſant to proceed from himſelf; putting them off as done by the counſel of Ferdinando. Wherefore he was content that Hialas (as in a matter moved and adviſed from Hialas himſelf) ſhould go into Scotland, to treat of a concord between the two kings. Hialas took it upon him, and coming to the Scotiſh king, after he had with much art brought king James to hearken to the more ſafe and quiet counſels, wrote unto the king, that he hoped that peace would with no great difficulty cement and cloſe, if he would ſend ſome wiſe and temperate counſellor of his own, that might treat of the conditions. Whereupon the king directed biſhop Fox (who at that time was at his caſtle of Norham) to confer with Hialas, and they both to treat with ſome commiſſioners deputed from the Scotiſh king. The commiſſioners on both ſides met. But, after much diſpute upon the articles and conditions of peace, propounded upon either part, they could not conclude a peace. The chief impediment thereof was the demand of the king to have Perkin delivered into his hands, as a reproach to all kings, and a perſon not protected by the law of nations. The king of Scotland, on the other ſide, peremptorily denied ſo to do, ſaying, that he (for his part) was no competent judge of Perkin's title: but that he had received him as a ſuppliant, protected him as a perſon fled for refuge, eſpouſed him with his kinſwoman, and aided him with his arms, upon the belief that he was a prince; and therefore that he could not now with his honour ſo unrip, and (in a ſort) put a lye upon all that he had ſaid and done before, as to deliver him up to his enemies. The biſhop likewiſe (who had certain proud inſtructions from the king, at the leaſt in the front, though there were a pliant clauſe at the foot, that remitted all to the biſhop's diſcretion, and required him by no means to break off in ill terms) after that he had failed to obtain the delivery of Perkin, did move a ſecond point of his inſtructions, which was, that the Scotiſh king would give the king an interview in perſon at Newcaſtle. But this being reported to the Scotiſh king, his anſwer was, that he meant to treat a peace, and not to go a begging for it. The biſhop alſo (according to another article of his inſtructions) demanded reſtitution of the ſpoils taken by the Scotiſh, or damages for the ſame. But the Scotiſh commiſſioners anſwered, that that was but as water ſpilt upon the ground, which could not be gotten up again; and that the king's people were better able to bear the loſs, than their maſter to repair it. But in the end (as perſons capable of reaſon) on both ſides they made rather a kind of receſs, than a breach of treaty, and concluded upon a truce for ſome months following. But the king of Scotland, though he would not formally retract his judgment of

Perkin,

Perkin, wherein he had engaged himſelf ſo far; yet in his private opinion, upon often ſpeech with the Engliſhmen, and divers other advertiſements, began to ſuſpect him for a counterfeit. Wherefore in a noble faſhion he called him unto him, and recounted the benefits and favours that he had done him in making him his ally, and in provoking a mighty and opulent king by an offenſive war in his quarrel, for the ſpace of two years together; nay more, that he had refuſed an honourable peace, whereof he had a fair offer if he would have delivered him; and that, to keep his promiſe with him, he had deeply offended both his nobles and people, whom he might not hold in any long diſcontent: and therefore required him to think of his own fortunes, and to chuſe out ſome fitter place for his exile: Telling him withal, that he could not ſay, but the Engliſh had forſaken him before the Scotiſh, for that, upon two ſeveral trials, none had declared themſelves on his ſide; but nevertheleſs he would make good what he ſaid to him at his firſt receiving, which was, that he ſhould not repent him for putting himſelf into his hands; for that he would not caſt him off, but help him with ſhipping and means to tranſport him where he ſhould deſire. Perkin, not deſcending at all from his ſtage-like greatneſs, anſwered the king in few words, that he ſaw his time was not yet come; but, whatſoever his fortunes were, he ſhould both think and ſpeak honour of the king. Taking his leave, he would not think on Flanders, doubting it was but hollow ground for him ſince the treaty of the arch-duke, concluded the year before; but took his lady, and ſuch followers as would not leave him, and ſailed over into Ireland.

This twelfth year of the king, a little before this time, pope Alexander (who loved beſt thoſe princes that were furtheſt off, and with whom he had leaſt to do) taking very thankfully the king's late entrance into league for the defence of Italy, did remunerate him with an hallowed ſword and cap of maintenance, ſent by his nuncio. Pope Innocent had done the like, but it was not received in that glory: for the king appointed the mayor and his brethren to meet the pope's orator at London-bridge, and all the ſtreets between the bridge foot and the palace of Paul's (where the king then lay) were garniſhed with the citizens, ſtanding in their liveries. And the morrow after (being Alhallows day) the king, attended with many of his prelates, nobles, and principal courtiers, went in proceſſion to Paul's, and the cap and ſword were born before him. And after the proceſſion, the king himſelf remaining ſeated in the quire, the lord archbiſhop, upon the greece of the quire, made a long oration: ſetting forth the greatneſs and eminency of that honour which the pope (in theſe ornaments and enſigns of benediction) had done the king; and how rarely, and upon what high deſerts, they uſed to be beſtowed: And then recited the king's principal acts and merits, which had made him appear worthy in the eyes of his holineſs, of this great honour.

All this while the rebellion of Cornwall (whereof we have ſpoken) ſeemed to have no relation to Perkin; ſave that perhaps Perkin's proclamation had ſtriken upon the right vein, in promiſing to lay down exactions and payments, and ſo had made them now and then have a kind thought on Perkin. But now theſe bubbles by much ſtirring began to meet, as they uſe to do upon the top of water. The king's lenity (by that time the Corniſh rebels, who were taken and pardoned, and, as it was ſaid, many of them ſold by them that had taken them, for twelve pence and two ſhillings a piece, were come down into their country) had rather emboldened them, than reclaimed them; inſomuch as they ſtuck not to ſay to their neighbours and countrymen, that the king did well to pardon them, for that he knew he ſhould leave few ſubjects in England, if he hanged all that were of their mind: and began whetting and inciting one another to renew the commotion. Some of the ſubtileſt of them, hearing of Perkin's being in Ireland, found means to ſend to him to let him know, that if he would come over to them, they would ſerve him.

When Perkin heard this news, he began to take heart again, and adviſed upon it with his council, which were principally three; Herne a mercer, that had fled for debt; Skelton a tailor, and Aſtley a ſcrivener; for ſecretary Frion was gone. Theſe told him, that he was mightily overſeen, both when he went

into Kent, and when he went into Scotland; the one being a place ſo near London, and under the king's noſe; and the other a nation ſo diſtaſted with the people of England, that if they had loved him never ſo well, yet they would never have taken his part in that company. But if he had been ſo happy as to have been in Cornwall at the firſt, when the people began to take arms there, he had been crowned at Weſtminſter before this time. For, theſe kings (as he had now experience) would ſell poor princes for ſhoes. But he muſt rely wholly upon people; and therefore adviſed him to ſail over with all poſſible ſpeed into Cornwall: which accordingly he did; having in his company four ſmall barks, with ſome ſixſcore or ſevenſcore fighting men. He arrived in September at Whitſand-Bay, and forthwith came to Bodmin, the blackſmith's town; where there aſſembled unto him to the number of three thouſand men of the rude people. There he ſet forth a new proclamation, ſtroaking the people with fair promiſes, and humouring them with invectives againſt the king and his government. And, as it fareth with ſmoke, that never loſeth itſelf till it be at the higheſt; he did now before his end raiſe his ſtyle, entitling himſelf no more Richard duke of York, but Richard the fourth, king of England. His council adviſed him by all means to make himſelf maſter of ſome good walled town; as well to make his men find the ſweetneſs of rich ſpoils, and to allure to him all looſe and loſt people, by like hopes of booty; as to be a ſure retreat to his forces, in caſe they ſhould have any ill day, or unlucky chance in the field. Wherefore they took heart to them, and went on, and beſieged the city of Exeter, the principal town for ſtrength and wealth in thoſe parts.

When they were come before Exeter, they forbare to uſe any force at the firſt, but made continual ſhouts and outcries to terrify the inhabitants. They did likewiſe in divers places call and talk to them from under the walls, to join with them, and be of their party; telling them, that the King would make them another London, if they would be the firſt town that ſhould acknowledge him. But they had not the wit to ſend to them, in any orderly faſhion, agents, or choſen men, to tempt them, and to treat with them. The citizens on their part ſhewed themſelves ſtout and loyal ſubjects: neither was there ſo much as any tumult or diviſion amongſt them, but all prepared themſelves for a valiant defence, and making good the town. For well they ſaw, that the rebels were of no ſuch number or power, that they needed to fear them as yet; and well they hoped, that before their numbers increaſed, the king's ſuccours would come in. And, howſoever, they thought it the extremeſt of evils, to put themſelves at the mercy of thoſe hungry and diſorderly people. Wherefore ſetting all things in good order within the town, they nevertheleſs let down with cords, from ſeveral parts of the walls privily, ſeveral meſſengers (that if one came to miſchance, another might paſs on) which ſhould advertiſe the king of the ſtate of the town, and implore his aid. Perkin alſo doubted, that ſuccours would come ere long; and therefore reſolved to uſe his utmoſt force to aſſault the town. And for that purpoſe having mounted ſcaling-ladders in divers places upon the walls, made at the ſame inſtant an attempt to force one of the gates. But having no artillery nor engines, and finding that he could do no good by ramming with logs of timber, nor by the uſe of iron bars, and iron crows, and ſuch other means at hand, he had no way left him but to ſet one of the gates on fire, which he did. But the citizens well perceiving the danger, before the gate could be fully conſumed, blocked up the gate, and ſome ſpace about it on the inſide, with faggots and other fuel, which they likewiſe ſet on fire, and ſo repulſed fire with fire; and in the mean time raiſed up rampiers of earth, and caſt up deep trenches, to ſerve inſtead of wall and gate. And for the ſcaladoes, they had ſo bad ſucceſs, as the rebels were driven from the walls with the loſs of two hundred men.

The king, when he heard of Perkin's ſiege of Exeter, made ſport with it, and ſaid to them that were about him, that the king of rake-hells was landed in the weſt, and that he hoped now to have the honour to ſee him, which he could never yet do. And it appeared plainly to thoſe that were about the king, that he was indeed much joyed with the news of Perkin's being in Engliſh

ground, where he could have no retreat by land; thinking now, that he ſhould be cured of thoſe privy ſtitches, which he had long had about his heart, and had ſometimes broken his ſleeps in the midſt of all his felicity. And to ſet all mens hearts on fire, he did by all poſſible means let it appear, that thoſe that ſhould now do him ſervice to make an end of theſe troubles, ſhould be no leſs accepted of him, than he that came upon the eleventh hour, and had the whole wages of the day. Therefore now (like the end of a play) a great number came upon the ſtage at once. He ſent the lord chamberlain, and the lord Brook, and Sir Rice ap Thomas, with expedite forces to ſpeed to Exeter, to the reſcue of the town, and to ſpread the fame of his own following in perſon with a royal army. The earl of Devonſhire, and his ſon, with the Carews, and the Fulfordes, and other principal perſons of Devonſhire (uncalled from the court, but hearing that the king's heart was ſo much bent upon this ſervice) made haſte with troops that they had raiſed, to be the firſt that ſhould ſuccour the city of Exeter, and prevent the king's ſuccours. The duke of Buckingham likewiſe, with many brave gentlemen, put themſelves in arms, not ſtaying either the king's or the lord chamberlain's coming on, but making a body of forces of themſelves, the more to endear their merit; ſignifying to the king their readineſs, and deſiring to know his pleaſure. So that according to the proverb, in the coming down, every ſaint did help.

Perkin, hearing this thunder of arms, and preparations againſt him from ſo many parts, raiſed his ſiege, and marched to Taunton; beginning already to ſquint one eye upon the crown, and another upon the ſanctuary: though the Corniſh-men were become, like metal often fired and quenched, churliſh, and that would ſooner break than bow; ſwearing and vowing not to leave him, till the uttermoſt drop of their blood were ſpilt. He was at his riſing from Exeter between ſix and ſeven thouſand ſtrong, many having come unto him after he was ſet before Exeter, upon fame of ſo great an enterprize, and to partake of the ſpoil; though upon the raiſing of his ſiege ſome did ſlip away. When he was come near Taunton, he diſſembled all fear, and ſeemed all the day to uſe diligence in preparing all things ready to fight. But about midnight, he fled with threeſcore horſe to Bewley in the New Foreſt, where he and divers of his company regiſtred themſelves ſanctuary men, leaving his Corniſh-men to the four winds; but yet thereby eaſing them of their vow, and uſing his wonted compaſſion, not to be by when his ſubjects blood ſhould be ſpilt. The king, as ſoon as he heard of Perkin's flight, ſent preſently five hundred horſe to purſue and apprehend him, before he ſhould get either to the ſea, or to that ſame little iſland, called a ſanctuary. But they came too late for the latter of theſe. Therefore all they could do, was to beſet the ſanctuary, and to maintain a ſtrong watch about it, till the king's pleaſure were farther known. As for the reſt of the rebels, they (being deſtituted of their head) without ſtroke ſtriken, ſubmitted themſelves unto the king's mercy. And the king, who commonly drew blood (as phyſicians do) rather to ſave life than to ſpill it, and was never cruel when he was ſecure; now he ſaw the danger was paſt, pardoned them all in the end, except ſome few deſperate perſons, which he reſerved to be executed, the better to ſet off his mercy towards the reſt. There were alſo ſent with all ſpeed ſome horſe to Saint Michael's mount in Cornwall, where the lady Katherine Gordon was left by her huſband, whom in all fortunes ſhe entirely loved; adding the virtues of a wife, to the virtues of her ſex. The king ſent in the greater diligence, not knowing whether ſhe might be with child, whereby the buſineſs would not have ended in Perkin's perſon. When ſhe was brought to the king, it was commonly ſaid, that the king received her not only with compaſſion, but with affection; pity giving more impreſſion to her excellent beauty. Wherefore comforting her (to ſerve as well his eye, as his fame) he ſent her to his queen, to remain with her; giving her very honourable allowance for the ſupport of her eſtate, which ſhe enjoyed both during the king's life, and many years after. The name of the White-roſe (which had been given to her huſband's falſe title) was continued in common ſpeech to her true beauty.

The king went forwards on his journey, and made a joyful entrance into Exeter, where he gave the citizens great commendations and thanks; and taking the ſword he wore from his ſide, he gave it to the mayor, and commanded it ſhould be ever after carried before him. There alſo he cauſed to be executed ſome of the ringleaders of the Corniſh-men, in ſacrifice to the citizens, whom they had put in fear and trouble. At Exeter the king conſulted with his council, whether he ſhould offer life to Perkin if he would quit the ſanctuary, and voluntarily ſubmit himſelf. The council were divided in opinion: ſome adviſed the king to take him out of ſanctuary perforce, and to put him to death, as in a caſe of neceſſity, which in itſelf diſpenſeth with conſecrated places, and things: wherein they doubted not alſo but the king ſhould find the pope tractable, to ratify his deed, either by declaration, or (at leaſt) by indulgence. Others were of opinion (ſince all was now ſafe, and no farther hurt could be done) that it was not worth the expoſing of the king to new ſcandal and envy. A third ſort fell upon the opinion, that it was not poſſible for the king ever, either to ſatisfy the world well touching the impoſture, or to learn out the bottom of the conſpiracy, except by promiſe of life and pardon, and other fair means, he ſhould get Perkin into his hands. But they did all in their preambles much bemoan the king's caſe, with a kind of indignation at his fortune; that a prince of his high wiſdom and virtue, ſhould have been ſo long and ſo oft exerciſed and vexed with idols. But the king ſaid, that it was the vexation of God Almighty himſelf to be vexed with idols, and therefore that that was not to trouble any of his friends: and that for himſelf, he always deſpiſed them; but was grieved that they had put his people to ſuch trouble and miſery. But (in concluſion) he leaned to the third opinion, and ſo ſent ſome to deal with Perkin: who ſeeing himſelf priſoner, and deſtitute of all hopes, having tried princes and people, great and ſmall, and found all either falſe, faint, or unfortunate, did gladly accept of the condition. The king did alſo (while he was at Exeter) appoint the lord Darcy, and others commiſſioners, for the fining of all ſuch as were of any value, and had any hand or partaking in the aid or comfort of Perkin, or the Corniſh-men, either in the field or in the flight.

Theſe commiſſioners proceeded with ſuch ſtrictneſs and ſeverity, as did much obſcure the king's mercy in ſparing of blood, with the bleeding of ſo much treaſure. Perkin was brought unto the king's court, but not to the king's preſence; though the king (to ſatisfy his curioſity) ſaw him ſometimes out of a window, or in paſſage. He was in ſhew at liberty, but guarded with all care and watch that was poſſible, and willed to follow the king to London. But from his firſt appearance upon the ſtage, in his new perſon of a ſycophant or jugler, inſtead of his former perſon of a prince, all men may think how he was expoſed to the deriſion, not only of the courtiers, but alſo of the common people, who flocked about him as he went along; that one might know afar off, where the owl was, by the flight of birds: ſome mocking, ſome wondering, ſome curſing, ſome prying and picking matter out of his countenance and geſture to talk of: So that the falſe honour and reſpects which he had ſo long enjoyed, was plentifully repaid in ſcorn and contempt. As ſoon as he was come to London, the king gave alſo the city the ſolace of this may-game: for he was conveyed leiſurely on horſeback (but not in any ignominious faſhion) through Cheapſide and Cornhill, to the Tower; and from thence back again to Weſtminſter, with the * churm of a thouſand taunts and reproaches. But to amend the ſhow, there followed a little diſtance off Perkin, an inward counſellor of his, one that had been ſerjeant farrier to the king. This fellow, when Perkin took ſanctuary, choſe rather to take an holy habit, than an holy place, and clad himſelf like an hermit, and in that weed wander'd about the country, till he was diſcovered and taken. But this man was bound hand and foot upon the horſe, and came not back with Perkin, but was left at the Tower, and within few days after executed. Soon after, now that Perkin could tell better what himſelf was, he was diligently examined; and after his confeſſion taken, an extract was made of ſuch parts of them, as were thought fit to be divulged, which was printed and diſperſed abroad: wherein the king did himſelf no right: for as there was a laboured

* cum choro.

tale

tale of particulars, of Perkin's father and mother, and grandfire and grandmother, and uncles and couſins, by names and ſurnames, and from what places he travelled up and down; ſo there was little or nothing to purpoſe of any thing concerning his deſigns, or any practices that had been held with him; nor the ducheſs of Burgundy herſelf (that all the world did take knowledge of, as the perſon that had put life and being into the whole buſineſs) ſo much as named or pointed at. So that men miſſing of that they looked for, looked about for they knew not what, and were in more doubt than before: but the king choſe rather not to ſatisfy, than to kindle coals. At that time alſo it did not appear by any new examinations or commitments, that any other perſon of quality was diſcovered or appeached, though the king's cloſeneſs made that a doubt dormant.

About this time a great fire in the night-time ſuddenly began at the king's palace of Shene, near unto the king's own lodgings, whereby a great part of the building was conſumed, with much coſtly houſhold-ſtuff; which gave the king occaſion of building from the ground that fine pile of Richmond, which is now ſtanding.

Somewhat before this time alſo, there fell out a memorable accident: There was one Sebaſtion Gabato, a Venetian, dwelling in Briſtol, a man ſeen and expert in coſmography and navigation. This man ſeeing the ſucceſs, and emulating perhaps the enterprize of Chriſtophorus Columbus in that fortunate diſcovery towards the ſouth-weſt, which had been by him made ſome ſix years before, conceited with himſelf, that lands might likewiſe be diſcovered towards the north-weſt. And ſurely it may be he had more firm and pregnant conjectures of it, than Columbus had of this at the firſt. For the two great iſlands of the old and new world, being (in the ſhape and making of them) broad towards the north, and pointed towards the ſouth; it is likely, that the diſcovery firſt began where the lands did neareſt meet. And there had been before that time a diſcovery of ſome lands, which they took to be iſlands, and were indeed the continent of America, towards the north-weſt. And it may be, that ſome relation of this nature coming afterwards to the knowledge of Columbus, and by him ſuppreſſed (deſirous rather to make his enterprize the child of his ſcience and fortune, than the follower of a former diſcovery) did give him better aſſurance, that all was not ſea, from the weſt of Europe and Africa unto Aſia, than either Seneca's prophecy, or Plato's antiquities, or the nature of the tides and land-winds, and the like, which were the conjectures that were given out, whereupon he ſhould have relied: though I am not ignorant, that it was likewiſe laid unto the caſual and wind-beaten diſcovery (a little before) of a Spaniſh pilot, who died in the houſe of Columbus. But this Gabato bearing the king in hand, that he would find out an iſland endued with rich commodities, procured him to man and victual a ſhip at Briſtol, for the diſcovery of that iſland: with whom ventured alſo three ſmall ſhips of London merchants, fraught with ſome groſs and ſlight wares, fit for commerce with barbarous people. He ſailed (as he affirmed at his return, and made a chart thereof) very far weſtwards, with a quarter of the north, on the north ſide of Tierra de Labrador, until he came to the latitude of ſixty ſeven degrees and an half, finding the ſeas ſtill open. It is certain alſo, that the king's fortune had a tender of that great empire of the Weſt-Indies. Neither was it a refuſal on the king's part, but a delay by accident, that put by ſo great an acqueſt: for Chriſtophorus Columbus, refuſed by the king of Portugal (who would not embrace at once both eaſt and weſt) employed his brother Bartholomæus Columbus unto king Henry, to negociate for his diſcovery: and it ſo fortuned, that he was taken by pirates at ſea, by which accidental impediment he was long ere he came to the king: ſo long, that before he had obtained a capitulation with the king for his brother, the enterprize by him was atchieved, and ſo the Weſt-Indies by providence were then reſerved for the crown of Caſtile. Yet this ſharpen'd the king ſo, that not only in this voyage, but again in the ſixteenth year of his reign, and likewiſe in the eighteenth thereof, he granted forth new commiſſions for the diſcovery and inveſting of unknown lands.

In this fourteenth year alſo (by God's wonderful providence, that boweth things unto his will, and hangeth great weights upon ſmall wires) there fell out a trifling and untoward accident, that drew on great and happy effects. During the truce with Scotland, there were certain Scotiſh young gentlemen that came into Norham town, and there made merry with ſome of the Engliſh of the town: and having little to do, went ſometimes forth, and would ſtand looking upon the caſtle. Some of the gariſon of the caſtle, obſerving this their doing twice or thrice, and having not their minds purged of the late ill blood of hoſtility, either ſuſpected them, or quarelled them for ſpies: whereupon they fell at ill words, and from words to blows; ſo that many were wounded of either ſide, and the Scotiſh-men (being ſtrangers in the town) had the worſt; inſomuch as ſome of them were ſlain, and the reſt made haſte home. The matter being complained on, and often debated before the wardens of the marches of both ſides, and no good order taken; the king of Scotland took it to himſelf, and being much kindled, ſent a herald to the king to make proteſtation, that if reparation were not done, according to the conditions of the truce, his king did denounce war. The king (who had often tried fortune, and was inclined to peace) made anſwer, that what had been done, was utterly againſt his will, and without his privity: but if the gariſon ſoldiers had been in fault, he would ſee them puniſhed, and the truce in all points to be preſerved. But this anſwer ſeemed to the Scotiſh king but a delay, to make the complaint breathe out with time; and therefore it did rather exaſperate him, than ſatisfy him. Biſhop Fox, underſtanding from the king that the Scotiſh king was ſtill diſcontent and impatient, being troubled that the occaſion of breaking of the truce ſhould grow from his men, ſent many humble and deprecatory letters to the Scotiſh king, to appeaſe him. Whereupon king James, mollified by the biſhop's ſubmiſſive and eloquent letters, wrote back unto him, that though he were in part moved by his letters, yet he ſhould not be fully ſatisfied, except he ſpake with him, as well about the compounding of the preſent differences, as about other matters that might concern the good of both kingdoms. The biſhop, adviſing firſt with the king, took his journey for Scotland. The meeting was at Melroſs, an abbey of the Ciſtercians, where the king then abode. The king firſt roundly uttered unto the biſhop his offence conceived for the inſolent breach of truce, by his men of Norham caſtle: whereunto biſhop Fox made ſuch an humble and ſmooth anſwer, as it was like oil into the wound, whereby it began to heal: and this was done in the preſence of the king and his council. After, the king ſpake with the biſhop apart, and opened himſelf unto him, ſaying, that theſe temporary truces and peaces were ſoon made, and ſoon broken, but that he deſired a ſtraiter amity with the king of England; diſcovering his mind, that if the king would give him in marriage the lady Margaret, his eldeſt daughter, that indeed might be a knot indiſſoluble. That he knew well what place and authority the biſhop deſervedly had with his maſter: therefore, if he would take the buſineſs to heart, and deal in it effectually, he doubted not but it would ſucceed well. The biſhop anſwered ſoberly, that he thought himſelf rather happy than worthy, to be an inſtrument in ſuch a matter, but would do his beſt endeavour. Wherefore the biſhop returning to the king, and giving account what had paſſed, and finding the king more than well diſpoſed in it, gave the king advice; firſt to proceed to a concluſion of peace, and then to go on with the treaty of marriage by degrees. Hereupon a peace was concluded, which was publiſhed a little before Chriſtmas, in the fourteenth year of the king's reign, to continue for both the kings lives, and the over-liver of them, and a year after. In this peace there was an article contained, that no Engliſh-man ſhould enter into Scotland, and no Scotiſh-man into England, without letters commendatory from the kings of either nation. This at the firſt ſight might ſeem a means to continue a ſtrangeneſs between the nations; but it was done to lock in the borderers.

This year there was alſo born to the king a third ſon, who was chriſten'd by the name of Edmund, and ſhortly after died. And much about the ſame time came news of the death of Charles the French king, for whom there were celebrated ſolemn and princely obſequies.

It was not long but Perkin (who was made of quickſilver, which is hard to hold or impriſon) began to ſtir. For deceiving his keepers, he took him to his heels, and made ſpeed to the ſea-coaſts. But preſently all corners were laid for him, and ſuch diligent purſuit and ſearch made, as he was fain to turn back, and get him to the houſe of Bethlehem, called the priory of Shene (which had the privilege of ſanctuary) and put himſelf into the hands of the prior of that monaſtery. The prior was thought an holy man, and much reverenced in thoſe days. He came to the king, and beſought the king for Perkin's life only, leaving him otherwiſe to the king's diſcretion. Many about the king were again more hot than ever, to have the king to take him forth, and hang him. But the king (that had an high ſtomach, and could not hate any that he deſpiſed) bid, "Take him forth, and ſet the knave in the ſtocks." And ſo promiſing the prior his life, he cauſed him to be brought forth. And within two or three days after, upon a ſcaffold ſet up in the palace court at Weſtminſter, he was fetter'd and ſet in the ſtocks for the whole day. And the next day after, the like was done by him at the croſs in Cheapſide, and in both places he read his confeſſion, of which we made mention before; and was from Cheapſide conveyed and laid up in the Tower. Notwithſtanding all this, the king was (as was partly touched before) grown to be ſuch a partner with fortune, as no body could tell what actions the one, and what the other owned. For it was believed generally, that Perkin was betrayed, and that this eſcape was not without the king's privity, who had him all the time of his flight in a line; and that the king did this, to pick a quarrel to him to put him to death, and to be rid of him at once: but this is not probable. For that the ſame inſtruments who obſerved him in his flight, might have kept him from getting into ſanctuary.

But it was ordained, that this winding-ivy of a Plantagenet ſhould kill the true tree itſelf. For Perkin, after he had been a while in the Tower, began to inſinuate himſelf into the favour and kindneſs of his keepers, ſervants to the lieutenant of the Tower Sir John Digby, being four in number; Strangeways, Blewet, Aſtwood, and Long Roger. Theſe varlets, with mountains of promiſes, he ſought to corrupt, to obtain his eſcape; but knowing well, that his own fortunes were made ſo contemptible, as he could feed no man's hopes (and by hopes he muſt work, for rewards he had none) he had contrived with himſelf a vaſt and tragical plot; which was, to draw into his company Edward Plantagenet earl of Warwick, then priſoner in the Tower; whom the weary life of a long impriſonment, and the often and renewing fears of being put to death, had ſoftned to take any impreſſion of counſel for his liberty. This young prince he thought theſe ſervants would look upon, though not upon himſelf: and therefore, after that by ſome meſſage by one or two of them, he had taſted of the earl's conſent; it was agreed that theſe four ſhould murder their maſter the lieutenant ſecretly in the night, and make their beſt of ſuch money and portable goods of his, as they ſhould find ready at hand, and get the keys of the Tower, and preſently let forth Perkin and the earl. But this conſpiracy was revealed in time, before it could be executed. And in this again the opinion of the king's great wiſdom did ſurcharge him with a ſiniſter fame, that Perkin was but his bait, to entrap the earl of Warwick. And in the very inſtant while this conſpiracy was in working (as if that alſo had been the king's induſtry) it was fatal, that there ſhould break forth a counterfeit earl of Warwick, a cordwainer's ſon, whoſe name was Ralph Wilford; a young man taught and ſet on by an Auguſtin friar, called Patrick. They both from the parts of Suffolk came forwards into Kent, where they did not only privily and underhand give out, that this Wilford was the true earl of Warwick, but alſo the friar, finding ſome light credence in the people, took the boldneſs in the pulpit to declare as much, and to incite the people to come in to his aid. Whereupon they were both preſently apprehended, and the young fellow executed, and the friar condemned to perpetual impriſonment. This alſo happening ſo opportunely, to repreſent the danger to the king's eſtate from the earl of Warwick, and thereby to colour the king's ſeverity that followed; together with the madneſs of the friar ſo vainly and deſperately to divulge a treaſon, before it had gotten any manner of ſtrength; and the ſaving of the friar's life, which nevertheleſs was (indeed) but the privilege of his order;

and the pity in the common people (whichif it run in a ſtrong ſtream, doth ever caſt up ſcandal and envy) made it generally rather talked than believed, that all was but the king's device. But howſoever it were, hereupon Perkin (that had offended againſt grace now the third time) was at the laſt proceeded with, and by commiſſioners of oyer and terminer, arraigned at Weſtminſter, upon divers treaſons committed and perpetrated after his coming on land within this kingdom (for ſo the judges adviſed, for that he was a foreigner) and condemned, and a few days after executed at Tyburn; where he did again openly read his confeſſion, and take it upon his death to be true. This was the end of this little cockatrice of a king, that was able to deſtroy thoſe that did not eſpy him firſt. It was one of the longeſt plays of that kind that hath been in memory, and might perhaps have had another end, if he had not met with a king both wiſe, ſtout, and fortunate.

As for Perkin's three counſellors, they had regiſtred themſelves ſanctuary-men when their maſter did; and whether upon pardon obtained, or continuance within the privilege, they came not to be proceeded with.

There were executed with Perkin, the mayor of Cork and his ſon, who had been principal abettors of his treaſons. And ſoon after were likewiſe condemned eight other perſons, about the Tower conſpiracy, whereof four were the lieutenant's men: but of thoſe eight, but two were executed. And immediately after was arraigned before the earl of Oxford (then for the time high ſteward of England) the poor prince, the earl of Warwick; not for the attempt to eſcape ſimply (for that was not acted; and beſides, the impriſonment not being for treaſon, the eſcape by law could not be treaſon) but for conſpiring with Perkin to raiſe ſedition, and to deſtroy the king: and the earl confeſſing the indictment, had judgment, and was ſhortly after beheaded on Tower-hill.

This was alſo the end, not only of this noble and commiſerable perſon Edward the earl of Warwick, eldeſt ſon to the duke of Clarence; but likewiſe of the line male of the Plantagenets, which had flouriſhed in great royalty and renown, from the time of the famous king of England, king Henry the ſecond. Howbeit it was a race often dipped in their own blood. It hath remained ſince only tranſplanted into other names, as well of the imperial line, as of other noble houſes. But it was neither guilt of crime, nor reaſon of ſtate, that could quench the envy that was upon the king for this execution: ſo that he thought good to export it out of the land, and to lay it upon his new ally, Ferdinando king of Spain. For theſe two kings underſtanding one another at half a word, ſo it was that there were letters ſhewed out of Spain, whereby in the paſſages concerning the treaty of the marriage, Ferdinando had written to the king in plain terms, that he ſaw no aſſurance of his ſucceſſion, as long as the earl of Warwick lived; and that he was loth to ſend his daughter to troubles and dangers. But hereby, as the king did in ſome part remove the envy from himſelf; ſo he did not obſerve, that he did withal bring a kind of malediction and infauſting upon the marriage, as an ill prognoſtick: which in event ſo far proved true, as both prince Arthur enjoyed a very ſmall time after the marriage, and the lady Katherine herſelf (a ſad and a religious woman) long after, when king Henry the eighth his reſolution of a divorce from her was firſt made known to her, uſed ſome words, that ſhe had not offended, but it was a judgment of God, for that her former marriage was made in blood; meaning that of the earl of Warwick.

This fifteenth year of the king, there was a great plague both in London and in divers parts of the kingdom. Wherefore the king, after often change of places (whether to avoid the danger of the ſickneſs, or to give occaſion of an interview with the arch-duke, or both) ſailed over with his queen to Calais. Upon his coming thither, the arch-duke ſent an honourable embaſſage unto him, as well to welcome him into thoſe parts, as to let him know, that (if it pleaſed him) he would come and do him reverence. But it was ſaid withal, that the king might be pleaſed to appoint ſome place, that were out of any walled town or fortreſs, for that he had denied the ſame upon like occaſion to the French king: and though, he ſaid, he made a great difference between the two kings,

yet

yet he would be loth to give a precedent, that might make it after to be expected at his hands, by another whom he truſted leſs. The king accepted of the courteſy, and admitted of his excuſe, and appointed the place to be at Saint Peter's church without Calais. But withal he did viſit the arch-duke with embaſſadors ſent from himſelf, which were the lord Saint John, and the ſecretary; unto whom the arch-duke did the honour, as (going to maſs at Saint Omer's) to ſet the lord Saint John on his right hand, and the ſecretary on his left, and ſo to ride between them to church. The day appointed for the interview the king went on horſeback ſome diſtance from Saint Peter's church, to receive the arch-duke: and upon their approaching, the arch-duke made haſte to light, and offered to hold the king's ſtirrup at his alighting; which the king would not permit, but deſcending from horſeback, they embraced with great affection; and withdrawing into the church to a place prepared, they had long conference, not only upon the confirmation of former treaties, and the freeing of commerce, but upon croſs marriages, to be had between the duke of York the king's ſecond ſon, and the arch-duke's daughter; and again between Charles the arch-duke's ſon and heir, and Mary, the king's ſecond daughter. But theſe bloſſoms of unripe marriages were but friendly wiſhes, and the airs of loving entertainment; though one of them came afterwards to concluſion in treaty, though not in effect. But during the time that the two princes converſed and communed together in the ſuburbs of Calais, the demonſtrations on both ſides were paſſing hearty and affectionate, eſpecially on the part of the arch-duke: who (beſides that he was a prince of an excellent good nature) being conſcious to himſelf how drily the king had been uſed by his council in the matter of Perkin, did ſtrive by all means to recover it in the king's affection. And having alſo his ears continually beaten with the counſels of his father and father-in-law, who (in reſpect of their jealous hatred againſt the French king) did always adviſe the arch-duke to anchor himſelf upon the amity of king Henry of England; was glad upon this occaſion to put in ure and practice their precepts, calling the king patron, and father, and protector (theſe very words the king repeats, when he certified of the loving behaviour of the arch-duke to the city) and what elſe he could deviſe, to expreſs his love and obſervance to the king. There came alſo to the king, the governour of Picardy, and the bailiff of Amiens, ſent from Lewis the French king to do him honour, and to give him knowledge of his victory, and winning of the duchy of Milan. It ſeemeth the king was well pleaſed with the honours he received from thoſe parts, while he was at Calais; for he did himſelf certify all the news and occurrents of them in every particular, from Calais, to the mayor and aldermen of London, which (no doubt) made no ſmall talk in the city. For the king, though he could not entertain the good-will of the citizens, as Edward the fourth did; yet by affability and other princely graces, did ever make very much of them, and apply himſelf to them.

This year alſo died John Morton, archbiſhop of Canterbury, chancellor of England, and cardinal. He was a wiſe man, and an eloquent, but in his nature harſh and haughty; much accepted by the king, but envied by the nobility, and hated of the people. Neither was his name left out of Perkin's proclamation for any good will, but they would not bring him in amongſt the king's caſting counters, becauſe he had the image and ſuperſcription upon him of the pope, in his honour of cardinal. He won the king with ſecrecy and diligence, but chiefly becauſe he was his old ſervant in his leſs fortunes: and alſo for that (in his affections) he was not without an inveterate malice againſt the houſe of York, under whom he had been in trouble. He was willing alſo to take envy from the king, more than the king was willing to put upon him: for the king cared not for ſubterfuges, but would ſtand envy, and appear in any thing that was to his mind; which made envy ſtill grow upon him more univerſal, but leſs daring. But in the matter of exactions, time did after ſhew, that the biſhop in feeding the king's humour, did rather temper it. He had been by Richard the third committed (as in cuſtody) to the duke of Buckingham, whom he did ſecretly incite to revolt from king Richard. But after the duke was engaged, and thought the biſhop ſhould have been his chief pilot in the tempeſt, the biſhop

was gotten into the cock-boat, and fled over beyond ſeas. But whatſoever elſe was in the man, he deſerveth a moſt happy memory, in that he was the principal mean of joining the two roſes. He died of great years, but of ſtrong health and powers.

The next year, which was the ſixteenth year of the king, and the year of our Lord one thouſand five hundred, was the year of jubilee at Rome. But pope Alexander, to ſave the hazard and charges of mens journeys to Rome, thought good to make over thoſe graces by exchange, to ſuch as would pay a convenient rate, ſeeing they could not come to fetch them. For which purpoſe was ſent into England, Jaſper Pons, a Spaniard, the pope's commiſſioner, better choſen than were the commiſſioners of pope Leo afterwards employed for Germany; for he carried the buſineſs with great wiſdom, and ſemblance of holineſs: inſomuch as he levied great ſums of money within this land to the pope's uſe, with little or no ſcandal. It was thought the king ſhared in the money. But it appeareth by a letter which cardinal Adrian, the king's penſioner, wrote to the king from Rome ſome few years after, that this was not ſo. For this cardinal, being to perſuade pope Julius, on the king's behalf, to expedite the bull of diſpenſation for the marriage between prince Henry and the lady Katherine, finding the pope difficile in granting thereof, doth uſe it as a principal argument concerning the king's merit towards that ſee, that he had touched none of thoſe deniers which had been levied by Pons in England. But that it might the better appear (for the ſatisfaction of the common people) that this was conſecrate money, the ſame nuncio brought unto the king a brief from the pope, wherein the king was exhorted and ſummoned to come in perſon againſt the Turk: for that the pope (out of the care of an univerſal father) ſeeing almoſt under his eyes the ſucceſſes and progreſſes of that great enemy of the faith, had had in the conclave, and with the aſſiſtance of the embaſſadors of foreign princes, divers conſultations about an holy war, and a general expedition of Chriſtian princes againſt the Turk: wherein it was agreed and thought fit, that the Hungarians, Poloniaris, and Bohemians, ſhould make a war upon Thracia; the French and Spaniards upon Græcia; and that the pope (willing to ſacrifice himſelf in ſo good a cauſe) in perſon, and in company of the king of England, the Venetians, and ſuch other ſtates as were great in maritime power, would ſail with a puiſſant navy through the Mediterranean unto Conſtantinople. And that to this end, his holineſs had ſent nuncio's to all Chriſtian princes; as well for a ceſſation of all quarrels and differences amongſt themſelves, as for ſpeedy preparations and contributions of forces and treaſure for this ſacred enterprize.

To this the king (who underſtood well the court of Rome) made an anſwer rather ſolemn than ſerious: ſignifying,

" That no prince on earth ſhould be more forward and obedient, both by his " perſon, and by all his poſſible forces and fortunes, to enter into this ſacred " war, than himſelf. But that the diſtance of place was ſuch, as no forces " that he ſhould raiſe for the ſeas, could be levied or prepared but with double " the charge, and double the time (at the leaſt) that they might be from the " other princes, that had their territories nearer adjoining. Beſides, that neither the manner of his ſhips (having no galleys) nor the experience of his pilots and mariners, could be ſo apt for thoſe ſeas as theirs. And therefore " that his holineſs might do well to move one of thoſe other kings, who lay " fitter for the purpoſe, to accompany him by ſea. Whereby both all things " would be ſooner put in readineſs, and with leſs charge, and the emulation " and diviſion of command, which might grow between thoſe kings of France " and Spain, if they ſhould both join in the war by land upon Græcia, might " be wiſely avoided: and that for his part he would not be wanting in aids " and contribution. Yet notwithſtanding, if both theſe kings ſhould refuſe, " rather than his holineſs ſhould go alone, he would wait upon him as ſoon as " he could be ready: always provided, that he might firſt ſee all differences of " the Chriſtian princes amongſt themſelves fully laid down and appeaſed (as for " his own part he was in none) and that he might have ſome good towns upon " the coaſt in Italy, put into his hands, for the retreat and ſafeguard of his men."

With this anſwer Jaſper Pons returned, nothing at all diſcontented: and yet this declaration of the king (as ſuperficial as it was) gave him that reputation abroad, as he was not long after elected by the knights of Rhodes protector of their order; all things multiplying to honour in a prince, that had gotten ſuch high eſtimation for his wiſdom and ſufficiency.

There were theſe two laſt years ſome proceedings againſt hereticks, which was rare in this king's reign, and rather by penances, than by fire. The king had (though he were no good ſchoolman) the honour to convert one of them by diſpute at Canterbury.

This year alſo, though the king were no more haunted with ſprites, for that by the ſprinkling, partly of blood, and partly of water, he had chaſed them away; yet nevertheleſs he had certain apparitions that troubled him, ſtill ſhewing themſelves from one region, which was the houſe of York. It came ſo to paſs, that the earl of Suffolk, ſon to Elizabeth eldeſt ſiſter to king Edward the fourth, by John duke of Suffolk her ſecond huſband, and brother to John earl of Lincoln, that was ſlain at Stokefield, being of an haſty and cholerick diſpoſition, had killed a man in his fury; whereupon the king gave him his pardon. But, either willing to leave a cloud upon him, or the better to make him feel his grace, produced him openly to plead his pardon. This wrought in the earl, as in a haughty ſtomach it uſeth to do; for the ignominy printed deeper than the grace. Wherefore he being diſcontent, fled ſecretly into Flanders, unto his aunt the ducheſs of Burgundy. The king ſtartled at it; but, being taught by troubles to uſe fair and timely remedies, wrought ſo with him by meſſages (the lady Margaret alſo growing, by often failing in her alchemy, weary of her experiments; and partly being a little ſweetned, for that the king had not touched her name in the confeſſion of Perkin) that he came over again upon good terms, and was reconciled to the king.

In the beginning of the next year, being the ſeventeenth of the king, the lady Katherine, fourth daughter of Ferdinando and Iſabella, king and queen of Spain, arrived in England at Plymouth the ſecond of October, and was married to prince Arthur in Paul's, the fourteenth of November following: the prince being then about fifteen years of age, and the lady about eighteen. The manner of her receiving, the manner of her entry into London, and the celebrity of the marriage, were performed with great and true magnificence, in regard of coſt, ſhew, and order. The chief man that took the care was biſhop Fox, who was not only a grave counſellor for war or peace, but alſo a good ſurveyor of works, and a good maſter of ceremonies, and any thing elſe that was fit for the active part, belonging to the ſervice of the court or ſtate of a great king. This marriage was almoſt ſeven years in treaty, which was in part cauſed by the tender years of the marriage couple, eſpecially of the prince; but the true reaſon was, that theſe two princes, being princes of great policy and profound judgment, ſtood a great time looking one upon another's fortunes, how they would go; knowing well, that in the mean time the very treaty itſelf gave abroad in the world a reputation of a ſtrait conjunction and amity between them, which ſerved on both ſides to many purpoſes, that their ſeveral affairs required, and yet they continued ſtill free. But in the end, when the fortunes of both the princes did grow every day more and more proſperous and aſſured, and that looking all about them, they ſaw no better conditions, they ſhut it up.

The marriage money the princeſs brought (which was turned over to the king by act of renunciation) was two hundred thouſand ducats: whereof one hundred thouſand were payable ten days after the ſolemnization, and the other hundred thouſand at two payments annual; but part of it to be in jewels and plate, and a due courſe ſet down to have them juſtly and indifferently prized. The jointure or advancement of the lady, was the third part of the principality of Wales, and of the dukedom of Cornwall, and of the earldom of Cheſter, to be after ſet forth in ſeveralty: and in caſe ſhe came to be queen of England, her advancement was left indefinite, but thus; that it ſhould be as great, as ever any former queen of England had.

In all the devices and conceits of the triumphs of this marriage, there was a great deal of aſtronomy: the lady being reſembled to Heſperus, and the prince to Arcturus, and the old king Alphonſus (that was the greateſt aſtronomer of kings, and was anceſtor to the lady) was brought in, to be the fortune-teller of the match. And whoſoever had thoſe toys in compiling, they were not altogether pedantical: but you may be ſure, that king Arthur the Britain, and the deſcent of the lady Katherine from the houſe of Lancaſter, was in no wiſe forgotten. But (as it ſhould ſeem) it is not good to fetch fortunes from the ſtars: for this young prince (that drew upon him at that time, not only the hopes and affections of his country, but the eyes and expectation of foreigners) after a few months, in the beginning of April, deceaſed at Ludlow Caſtle, where he was ſent to keep his reſiance and court, as prince of Wales. Of this prince, in reſpect he died ſo young, and by reaſon of his father's manner of education, that did caſt no great luſtre upon his children, there is little particular memory: only thus much remaineth, that he was very ſtudious and learned, beyond his years, and beyond the cuſtom of great princes.

There was a doubt ripped up in the times following, when the divorce of king Henry the eighth from the lady Katherine did ſo much buſy the world, whether Arthur was bedded with his lady or no, whereby that matter in fact (of carnal knowledge) might be made part of the caſe. And it is true, that the lady herſelf denied it, or at leaſt her counſel ſtood upon it, and would not blanch that advantage, although the plenitude of the pope's power of diſpenſing was the main queſtion. And this doubt was kept long open, in reſpect of the two queens that ſucceeded, Mary and Elizabeth, whoſe legitimations were incompatible one with another, though their ſucceſſion was ſettled by act of parliament. And the times that favoured queen Mary's legitimation would have it believed, that there was no carnal knowledge between Arthur and Katherine. Not that they would ſeem to derogate from the pope's abſolute power, to diſpenſe even in that caſe; but only in point of honour, and to make the caſe more favourable and ſmooth. And the times that favoured queen Elizabeth's legitimation (which were the longer and the latter) maintained the contrary. So much there remaineth in memory, that it was half a year's time between the creation of Henry prince of Wales, and prince Authur's death, which was conſtrued to be, for to expect a full time, whereby it might appear, whether the lady Katherine were with child by prince Arthur, or no. Again, the lady herſelf procured a bull, for the better corroboration of the marriage, with a clauſe of *(vel forſan cognitam)* which was not in the firſt bull. There was given in evidence alſo, when the cauſe of the divorce was handled, a pleaſant paſſage, which was; that in a morning prince Arthur, upon his up-riſing from bed with her, called for drink, which he was not accuſtomed to do, and finding the gentleman of his chamber that brought him the drink to ſmile at it, and to note it, he ſaid merrily to him; that he had been in the midſt of Spain, which was an hot region, and his journey had made him dry; and that if the other had been in ſo hot a clime, he would have been drier than he. Beſides, the prince was upon the point of ſixteen years of age when he died, and forward, and able in body.

The February following, Henry duke of York was created prince of Wales, and earl of Cheſter and Flint: for the dukedom of Cornwall devolved to him by ſtatute. The king alſo being faſt handed, and loth to part with a ſecond dowry, but chiefly being affectionate both by his nature, and out of politick conſiderations to continue the alliance with Spain, prevailed with the prince (though not without ſome reluctation, ſuch as could be in thoſe years, for he was not twelve years of age) to be contracted with the princeſs Katherine. The ſecret providence of God ordaining that marriage to be the occaſion of great events and changes.

The ſame year were the eſpouſals of James king of Scotland with the lady Margaret, the king's eldeſt daughter; which was done by proxy, and publiſhed at Paul's croſs the five and twentieth of January, and Te Deum ſolemnly ſung. But certain it is, that the joy of the city thereupon ſhewed, by ringing of bells and bonfires, and ſuch other incenſe of the people, was more than could be expected

pected, in a caſe of ſo great and freſh enmity between the nations, eſpecially in London, which was far enough off from feeling any of the former calamities of the war: and therefore might be truly attributed to a ſecret inſtinct and inſpiring (which many times runneth not only in the hearts of princes, but in the pulſe and veins of people) touching the happineſs thereby to enſue in time to come. This marriage was in Auguſt following conſummated at Edinborough: the king bringing his daughter as far as Colliweſton on the way, and then conſigning her to the attendance of the earl of Northumberland; who with a great troop of lords and ladies of honour, brought her into Scotland, to the king her huſband.

This marriage had been in treaty by the ſpace of almoſt three years, from the time that the king of Scotland did firſt open his mind to biſhop Fox. The ſum given in marriage by the king, was ten thouſand pounds: and the jointure and advancement aſſured by the king of Scotland, was two thouſand pounds a year, after king James his death, and one thouſand pounds a year in preſent, for the lady's allowance or maintenance. This to be ſet forth in lands, of the beſt and moſt certain revenue. During the treaty, it is reported, that the king remitted the matter to his council; and that ſome of the table, in the freedom of counſellors (the king being preſent) did put the caſe; that if God ſhould take the king's two ſons without iſſue, that then the kingdom of England would fall to the king of Scotland, which might prejudice the monarchy of England. Whereunto the king himſelf replied; that if that ſhould be, Scotland would be but an acceſſion to England, and not England to Scotland, for that the greater would draw the leſs: and that it was a ſafer union for England, than that of France. This paſſed as an oracle, and ſilenced thoſe that moved the queſtion.

The ſame year was fatal, as well for deaths as marriages, and that with equal temper. For the joys and feaſts of the two marriages were compenſed with the mournings and funerals of prince Arthur (of whom we have ſpoken) and of queen Elizabeth, who died in child-bed in the Tower, and the child lived not long after. There died alſo that year Sir Reginald Bray, who was noted to have had with the king the greateſt freedom of any counſellor; but it was but a freedom the better to ſet off flattery. Yet he bare more than his juſt part of envy for the exactions.

At this time the king's eſtate was very proſperous: ſecured by the amity of Scotland, ſtrengthen'd by that of Spain, cheriſhed by that of Burgundy, all domeſtick troubles quenched, and all noiſe of war (like a thunder afar off) going upon Italy. Wherefore nature, which many times is happily contained and refrained by ſome bands of fortune, began to take place in the king; carrying (as with a ſtrong tide) his affections and thoughts unto the gathering and heaping up of treaſure. And as kings do more eaſily find inſtruments for their will and humour, than for their ſervice and honour; he had gotten for his purpoſe, or beyond his purpoſe, two inſtruments, Empſon and Dudley (whom the people eſteemed as his horſe-leeches and ſhearers) bold men and careleſs of fame, and that took toll of their maſter's griſt. Dudley was of a good family, eloquent, and one that could put hateful buſineſs into good language. But Empſon, that was the ſon of a ſieve-maker, triumphed always upon the deed done, putting off all other reſpects whatſoever. Theſe two perſons being lawyers in ſcience, and privy counſellors in authority (as the corruption of the beſt things is the worſt) turned law and juſtice into wormwood and rapine. For firſt, their manner was to cauſe divers ſubjects to be indicted of ſundry crimes, and ſo far forth to proceed in form of law; but when the bills were found, then preſently to commit them: and nevertheleſs not to produce them in any reaſonable time to their anſwer, but to ſuffer them to languiſh long in priſon, and by ſundry artificial devices and terrors, to extort from them great fines and ranſoms, which they termed compoſitions and mitigations.

Neither did they (towards the end) obſerve ſo much as the half-face of juſtice, in proceeding by indictment; but ſent forth their precepts to attach men and convent them before themſelves, and ſome others, at their private houſes, in a court of commiſſion; and there uſed to ſhuffle up a ſummary proceeding by

examination, without tryal of jury; aſſuming to themſelves there, to deal both in pleas of the crown, and controverſies civil.

Then did they alſo uſe to enthrall and charge the ſubjects lands with tenures *in capite*, by finding falſe offices, and thereby to work upon them for wardſhips, liveries, premier ſeiſins, and alienations (being the fruits of thoſe tenures) refuſing, upon divers pretexts and delays, to admit men to traverſe thoſe falſe offices, according to the law. Nay, the king's wards, after they had accompliſhed their full age, could not be ſuffered to have livery of their lands, without paying exceſſive fines, far exceeding all reaſonable rates. They did alſo vex men with informations of intruſion, upon ſcarce colourable titles.

When men were outlaw'd in perſonal actions, they would not permit them to purchaſe their charters of pardon, except they paid great and intolerable ſums; ſtanding upon the ſtrict point of law, which upon outlawries giveth forfeiture of goods: nay, contrary to all law and colour, they maintained the king ought to have the half of mens lands and rents, during the ſpace of full two years, for a pain in caſe of outlawry. They would alſo ruffle with jurors, and inforce them to find as they would direct, and (if they did not) convent them, impriſon them, and fine them.

Theſe and many other courſes, fitter to be buried than repeated, they had of preying upon the people; both like tame hawks for their maſter, and like wild hawks for themſelves; inſomuch as they grew to great riches and ſubſtance: but their principal working was upon penal laws, wherein they ſpared none, great nor ſmall; nor conſidered whether the law were poſſible or impoſſible, in uſe, or obſolete: but raked over all old and new ſtatutes, though many of them were made with intention rather of terror than of rigour, having ever a rabble of promoters, queſtmongers, and leading jurors at their command, ſo as they could have any thing found either for fact or valuation.

There remaineth to this day a report, that the king was on a time entertained by the earl of Oxford (that was his principal ſervant both for war and peace) nobly and ſumptuouſly, at his caſtle at Henningham: And at the king's going away, the earl's ſervants ſtood (in a ſeemly manner) in their livery coats, with cognizances, ranged on both ſides, and made the king a lane. The king called the earl to him, and ſaid, "My lord, I have heard much of your hoſpitality, "but I ſee it is greater than the ſpeech: Theſe handſome gentlemen and yeo-"men, which I ſee on both ſides of me, are ſure your menial ſervants." The earl ſmiled, and ſaid, "It may pleaſe your grace, that were not for mine eaſe: "they are moſt of them my retainers, that are come to do me ſervice at ſuch a "time as this, and chiefly to ſee your grace." The king ſtarted a little, and ſaid, "By my faith, my lord, I thank you for my good chear, but I may not endure "to have my laws broken in my ſight: my attorney muſt ſpeak with you." And it is part of the report, that the earl compounded for no leſs than fifteen thouſand marks. And to ſhew farther the king's extreme diligence, I do remember to have ſeen long ſince a book of accompt of Empſon's, that had the king's hand almoſt to every leaf, by way of ſigning, and was in ſome places poſtilled in the margin with the king's hand likewiſe, where was this remembrance.

"Item, Received of ſuch a one five marks, for a pardon to be procured;
"and if the pardon do not paſs, the money to be repaid; except the party
"be ſome other ways ſatisfied.

And over againſt this *Memorandum* (of the king's own hand)

"Otherwiſe ſatisfied."

Which I do the rather mention, becauſe it ſhews in the king a nearneſs, but yet with a kind of juſtneſs. So theſe little ſands and grains of gold and ſilver (as it ſeemeth) helped not a little to make up the great heap and bank.

But mean while (to keep the king awake) the earl of Suffolk, having been too gay at prince Arthur's marriage, and ſunk himſelf deep in debt, had yet once more a mind to be a knight-errant, and to ſeek adventures in foreign parts; and taking his brother with him, fled again into Flanders. That (no doubt)

which gave him confidence, was the great murmur of the people againſt the king's government: and being a man of a light and raſh ſpirit, he thought every vapour would be a tempeſt. Neither wanted he ſome party within the kingdom: for the murmur of people awakes the diſcontents of nobles; and again, that calleth up commonly ſome head of ſedition. The king reſorting to his wonted and tried arts, cauſed Sir Robert Curſon, captain of the caſtle at Hammes (being at that time beyond ſea, and therefore leſs likely to be wrought upon by the king) to fly from his charge, and to feign himſelf a ſervant of the earl's. This knight, having inſinuated himſelf into the ſecrets of the earl, and finding by him upon whom chiefly he had either hope or hold, advertiſed the king thereof in great ſecrecy: but nevertheleſs maintained his own credit and inward truſt with the earl. Upon whoſe advertiſements, the king attached William Courtney earl of Devonſhire, his brother-in-law, married to the lady Katherine, daughter to king Edward the fourth; William de la Pole, brother to the earl of Suffolk; Sir James Tirrel, and Sir John Windham, and ſome other meaner perſons, and committed them to cuſtody. George lord Abergavenny, and Sir Thomas Green, were at the ſame time apprehended; but as upon leſs ſuſpicion, ſo in a freer reſtraint, and were ſoon after delivered. The earl of Devonſhire being intereſſed in the blood of York, that was rather feared than nocent; yet as one that might be the object of others plots and deſigns, remained priſoner in the Tower, during the king's life. William de la Pole was alſo long reſtrained, though not ſo ſtraitly. But for Sir James Tirrel (againſt whom the blood of the innocent princes, Edward the fifth, and his brother, did ſtill *cry from under the altar*) and Sir John Windham, and the other meaner ones, they were attainted and executed; the two knights beheaded. Nevertheleſs, to confirm the credit of Curſon (who belike had not yet done all his feats of activity) there was publiſhed at Paul's croſs, about the time of the ſaid executions, the pope's bull of excommunication and curſe, againſt the earl of Suffolk and Sir Robert Curſon, and ſome others by name; and likewiſe in general againſt all the abettors of the ſaid earl: wherein it muſt be confeſſed, that heaven was made too much to bow to earth, and religion to policy. But ſoon after, Curſon (when he ſaw time) returned into England, and withal into wonted favour with the king, but worſe fame with the people. Upon whoſe return the earl was much diſmayed, and ſeeing himſelf deſtitute of hopes (the lady Margaret alſo by tract of time, and bad ſucceſs, being now become cool in thoſe attempts) after ſome wandering in France and Germany, and certain little projects, no better than ſquibs of an exiled man, being tired out, retired again into the protection of the arch-duke Philip in Flanders, who by the death of Iſabella was at that time king of Caſtile, in the right of Joan his wife.

This year (being the nineteenth of his reign) the king called his parliament: wherein a man may eaſily gueſs how abſolute the king took himſelf to be with his parliament, when Dudley, that was ſo hateful, was made ſpeaker of the houſe of commons. In this parliament there were not made any ſtatutes memorable touching publick government. But thoſe that were, had ſtill the ſtamp of the king's wiſdom and policy.

There was a ſtatute made for the diſannulling of all patents of leaſe or grant, to ſuch as came not upon lawful ſummons to ſerve the king in his wars, againſt the enemies or rebels, or that ſhould depart without the king's licence; with an exception of certain perſons of the long robe: providing nevertheleſs, that they ſhould have the king's wages from their houſe, till their return home again. There had been the like made before for offices, and by this ſtatute it was extended to lands. But a man may eaſily ſee by many ſtatutes made in this king's time, that the king thought it ſafeſt to aſſiſt martial law, by law of parliament.

Another ſtatute was made, prohibiting the bringing in of manufactures of ſilk wrought by itſelf, or mixt with any other thread. But it was not of ſtuffs of whole piece (for that the realm had of them no manufacture in uſe at that time) but of knit ſilk, or texture of ſilk; as ribbands, laces, cauls, points, and girdles, &c. which the people of England could then well ſkill to make. This

law pointed at a true principle; "That where foreign materials are but ſuper-"fluities, foreign manufactures ſhould be prohibited." For that will either baniſh the ſuperfluity, or gain the manufacture.

There was a law alſo of reſumption of patents of gaols, and the reannexing of them to the ſheriffwicks; privileged officers being no leſs an interruption of juſtice, than privileged places.

There was likewiſe a law to reſtrain the by-laws, or ordinances of corporations, which many times were againſt the prerogative of the king, the common law of the realm, and the liberty of the ſubject, being fraternities in evil. It was therefore provided, that they ſhould not be put in execution, without the allowance of the chancellor, treaſurer, and the two chief juſtices, or three of them, or of the two juſtices of circuit where the corporation was.

Another law was (in effect) to bring in the ſilver of the realm to the mint, in making all clipped, miniſhed, or impaired coins of ſilver, not to be current in payments; without giving any remedy of weight, but with an exception only of reaſonable wearing, which was as nothing in reſpect of the uncertainty; and ſo (upon the matter) to ſet the mint on work, and to give way to new coins of ſilver, which ſhould be then minted.

There likewiſe was a long ſtatute againſt vagabonds, wherein two things may be noted; the one, the diſlike the parliament had of gaoling of them, as that which was chargeable, peſterous, and of no open example. The other, that in the ſtatutes of this king's time (for this of the nineteenth year is not the only ſtatute of that kind) there are ever coupled the puniſhment of vagabonds, and the forbidding of dice and cards, and unlawful games, unto ſervants and mean people, and the putting down and ſuppreſſing of alehouſes, as ſtrings of one root together, and as if the one were unprofitable without the other.

As for riot and retainers, there paſſed ſcarce any parliament in this time without a law againſt them; the king ever having an eye to might and multitude.

There was granted alſo that parliament a ſubſidy, both from the temporalty and the clergy. And yet nevertheleſs, ere the year expired, there went out commiſſions for a general benevolence, though there were no wars, no fears. The ſame year the city gave five thouſand marks, for confirmation of their liberties; a thing fitter for the beginnings of kings reigns, than the latter ends. Neither was it a ſmall matter that the mint gained upon the late ſtatute, by the recoinage of groats and half-groats, now twelve-pences and ſix-pences. As for Empſon and Dudley's mills, they did grind more than ever: ſo that it was a ſtrange thing to ſee what golden ſhowers poured down upon the king's treaſury at once: the laſt payments of the marriage-money from Spain; the ſubſidy; the benevolence; the recoinage; the redemption of the city's liberties; the caſualties. And this is the more to be marvelled at, becauſe the king had then no occaſions at all of wars or troubles. He had now but one ſon, and one daughter unbeſtowed. He was wiſe; he was of an high mind; he needed not to make riches his glory; he did excel in ſo many things elſe; ſave that certainly avarice doth ever find in itſelf matter of ambition. Belike he thought to leave his ſon ſuch a kingdom, and ſuch a maſs of treaſure, as he might chuſe his greatneſs where he would.

This year was alſo kept the ſerjeants feaſt, which was the ſecond call in this king's days.

About this time, Iſabella queen of Caſtile deceaſed; a right noble lady, and an honour to her ſex and times, and the corner-ſtone of the greatneſs of Spain that hath followed. This accident the king took not for news at large, but thought it had a great relation to his own affairs; eſpecially in two points: the one for example, the other for conſequence. Firſt, he conceived that the caſe of Ferdinando of Aragon, after the death of queen Iſabella, was his own caſe after the death of his own queen; and the caſe of Joan the heir unto Caſtile, was the caſe of his own ſon prince Henry. For if both of the kings had their kingdoms in the right of their wives, they deſcended to the heirs, and did not accrue to the huſbands. And although his own caſe had both ſteel and parchment, more than the other (that is to ſay, a conqueſt in the field, and an act of parliament)

parliament) yet, notwithſtanding, that natural title of deſcent in blood did (in the imagination even of a wiſe man) breed a doubt, that the other two were not ſafe nor ſufficient. Wherefore he was wonderful diligent to enquire and obſerve what became of the king of Aragon, in holding and continuing the kingdom of Caſtile; and whether he did hold it in his own right; or as adminiſtrator to his daughter; and whether he were like to hold it in fact, or to be put out by his ſon-in-law. Secondly, he did revolve in his mind, that the ſtate of Chriſtendom might by this late accident have a turn. For whereas before time, himſelf, with the conjunction of Aragon and Caſtile (which then was one) and the amity of Maximilian and Philip his ſon the arch-duke, was far too ſtrong a party for France; he began to fear, that now the French king (who had great intereſt in the affections of Philip the young king of Caſtile) and Philip himſelf, now king of Caſtile (who was in ill terms with his father-in-law about the preſent government of Caſtile) and thirdly, Maximilian, Philip's father (who was ever variable, and upon whom the ſureſt aim that could be taken was, that he would not be long as he had been laſt before) would, all three being potent princes, enter into ſome ſtrait league and confederation amongſt themſelves: whereby though he ſhould not be endangered, yet he ſhould be left to the poor amity of Aragon. And whereas he had been heretofore a kind of arbiter of Europe, he ſhould now go leſs, and be over-topped by ſo great a conjunction. He had alſo (as it ſeems) an inclination to marry, and bethought himſelf of ſome fit conditions abroad: and amongſt others he had heard of the beauty and virtuous behaviour of the young queen of Naples, the widow of Ferdinando the younger, being then of matronal years of ſeven and twenty: by whoſe marriage he thought that the kingdom of Naples (having been a goal for a time between the king of Aragon, and the French king, and being but newly ſettled) might in ſome part be depoſited in his hands, who was ſo able to keep the ſtakes. Therefore he ſent in embaſſage or meſſage, three confident perſons, Francis Marſin, James Braybrooke, and John Stile, upon two ſeveral inquiſitions rather than negotiations. The one touching the perſon and condition of the young queen of Naples. The other touching all particulars of eſtate, that concerned the fortunes and intentions of Ferdinando. And becauſe they may obſerve beſt, who themſelves are obſerved leaſt, he ſent them under colourable pretexts; giving them letters of kindneſs and compliment from Katherine the princeſs, to her aunt and niece, the old and young queen of Naples, and delivering to them alſo a book of new articles of peace; which notwithſtanding it had been delivered unto doctor de Puebla, the lieger ambaſſador of Spain here in England, to be ſent; yet for that the king had been long without hearing from Spain, he thought good thoſe meſſengers, when they had been with the two queens, ſhould likewiſe paſs on to the court of Ferdinando, and take a copy of the book with them. The inſtructions touching the queen of Naples were ſo curious and exquiſite, being as articles whereby to direct a ſurvey, or framing a particular of her perſon, for complexion, favour, feature, ſtature, health, age, cuſtoms, behaviour, conditions, and eſtate, as, if the king had been young, a man would have judged him to be amorous; but, being ancient, it ought to be interpreted, that ſure he was very chaſte, for that he meant to find all things in one woman, and ſo to ſettle his affections without ranging. But in this match he was ſoon cooled, when he heard from his embaſſadors, that this young queen had had a goodly jointure in the realm of Naples, well anſwered during the time of her uncle Frederick, yea and during the time of Lewis the French king, in whoſe diviſion her revenue fell; but ſince the time that the kingdom was in Ferdinando's hands, all was aſſigned to the army and garriſons there, and ſhe received only a penſion or exhibition out of his coffers.

The other part of the enquiry had a grave and diligent return, informing the king at full of the preſent ſtate of king Ferdinando. By this report it appeared to the king, that Ferdinando did continue the government of Caſtile, as adminiſtrator unto his daughter Joan, by the title of queen Iſabella's will, and partly by the cuſtom of the kingdom, as he pretended. And that all mandates and grants were expedited in the name of Joan his daughter, and himſelf as ad-

miniſtrator, without mention of Philip her huſband. And that king Ferdinando, howſoever he did diſmiſs himſelf of the name of king of Caſtile, yet meant to hold the kingdom without account, and in abſolute command.

It appeareth alſo, that he flattered himſelf with hopes, that king Philip would permit unto him the government of Caſtile during his life; which he had laid his plot to work him unto, both by ſome counſellors of his about him, which Ferdinando had at his devotion, and chiefly by promiſe, that in caſe Philip gave not way unto it, he would marry ſome young lady, whereby to put him by the ſucceſſion of Aragon and Granada, in caſe he ſhould have a ſon; and laſtly, by repreſenting unto him that the government of the Burgundians, till Philip were by continuance in Spain made as natural of Spain, would not be endured by the Spaniards. But in all thoſe things (though wiſely laid down and conſidered) Ferdinando failed; but that Pluto was better to him than Pallas.

In the ſame report alſo, the embaſſadors being mean men, and therefore the more free, did ſtrike upon a ſtring which was ſomewhat dangerous; for they declared plainly, that the people of Spain, both nobles and commons, were better affected unto the part of Philip (ſo he brought his wife with him) than to Ferdinando; and expreſſed the reaſon to be, becauſe he had impoſed upon them many taxes and tallages; which was the king's own caſe between him and his ſon.

There was alſo in this report a declaration of an overture of marriage, which Amaſon the ſecretary of Ferdinando had made unto the embaſſadors in great ſecret, between Charles prince of Caſtile, and Mary the king's ſecond daughter; aſſuring the king, that the treaty of marriage then on foot for the ſaid prince and the daughter of France, would break: and that ſhe the ſaid daughter of France ſhould be married to Angoleſme, that was the heir apparent of France.

There was a touch alſo of a ſpeech of marriage between Ferdinando and madame de Fois, a lady of the blood of France, which afterwards indeed ſucceeded. But this was reported as learned in France, and ſilenced in Spain.

The king by the return of this embaſſage, which gave great light unto his affairs, was well inſtructed, and prepared how to carry himſelf between Ferdinando king of Aragon, and Philip his ſon-in-law, king of Caſtile; reſolving with himſelf to do all that in him lay, to keep them at one within themſelves; but howſoever that ſucceeded, by a moderate carriage, and bearing the perſon of a common friend, to loſe neither of their friendſhips; but yet to run a courſe more entire with the king of Aragon, but more laboured and officious with the king of Caſtile. But he was much taken with the overture of marriage with his daughter Mary; both becauſe it was the greateſt marriage of Chriſtendom, and for that it took hold of both allies.

But to corroborate his alliance with Philip, the winds gave him an interview: for Philip chuſing the winter ſeaſon, the better to ſurprize the king of Aragon, ſet forth with a great navy out of Flanders for Spain, in the month of January, the one and twentieth year of the king's reign. But himſelf was ſurprized with a cruel tempeſt, that ſcattered his ſhips upon the ſeveral coaſts of England. And the ſhip wherein the king and queen were (with two other ſmall barks only) torn, and in great peril, to eſcape the fury of the weather thruſt into Weymouth. King Philip himſelf, having not been uſed (as it ſeems) to ſea, all wearied and extream ſick, would needs land to refreſh his ſpirits, though it was againſt the opinion of his council, doubting it might breed delay, his occaſions requiring celerity.

The rumour of the arrival of a puiſſant navy upon the coaſt, made the country arm. And Sir Thomas Trenchard, with forces ſuddenly raiſed, not knowing what the matter might be, came to Weymouth. Where underſtanding the accident, he did in all humbleneſs and humanity invite the king and queen to his houſe; and forthwith diſpatched poſts to the court. Soon after came Sir John Carew likewiſe, with a great troop of men well armed; uſing the like humbleneſs and reſpects towards the king, when he knew the caſe. King Philip doubting that they, being but ſubjects, durſt not let him paſs away again

without the king's notice and leave, yielded to their entreaties to ſtay till they heard from the court. The king, as ſoon as he heard the news, commanded preſently the earl of Arundel to go to viſit the king of Caſtile, and let him underſtand that as he was very ſorry for his miſhap, ſo he was glad that he had eſcaped the danger of the ſeas, and likewiſe of the occaſion himſelf had to do him honour; and deſiring him to think himſelf as in his own land; and that the king made all haſte poſſible to come and embrace him. The earl came to him in great magnificence, with a brave troop of three hundred horſe; and (for more ſtate) came by torch-light. After he had done the king's meſſage, king Philip ſeeing how the world went, the ſooner to get away, went upon ſpeed to the king at Windſor, and his queen followed by eaſy journeys. The two kings at their meeting uſed all the careſſes and loving demonſtrations that were poſſible. And the king of Caſtile ſaid pleaſantly to the king, "that he was "now puniſhed for that he would not come within his walled town of Calais, "when they met laſt." But the king anſwered, "that walls and ſeas were no-"thing where hearts were open; and that he was here no otherwiſe but to be "ſerved." After a day or two's refreſhing, the kings entered into ſpeech of renewing the treaty; the king ſaying, that though king Philip's perſon were the ſame, yet his fortunes and ſtate were raiſed: in which caſe a renovation of treaty was uſed amongſt princes. But while theſe things were in handling, the king chuſing a fit time, and drawing the king of Caſtile into a room, where they two only were private, and laying his hand civilly upon his arm, and changing his countenance a little from a countenance of entertainment, ſaid to him, "Sir, "you have been ſaved upon my coaſt, I hope, you will not ſuffer me to wrack "upon yours." The king of Caſtile aſked him, "what he meant by that "ſpeech?" "I mean it (ſaith the king) by that ſame harebrain wild fellow, "my ſubject, the earl of Suffolk, who is protected in your country, and begins "to play the fool, when all others are weary of it." The king of Caſtile anſwered, "I had thought (Sir) your felicity had been above thoſe thoughts: but, "if it trouble you, I will baniſh him." The king replied, "thoſe hornets "were beſt in their neſt, and worſt then when they did fly abroad; and that "his deſire was to have him delivered to him." The king of Caſtile herewith a little confuſed, and in a ſtudy, ſaid, "That can I not do with my honour, "and leſs with yours; for you will be thought to have uſed me as a priſoner." The king preſently ſaid, "Then the matter is at an end: for I will take that "diſhonour upon me, and ſo your honour is ſaved." The king of Caſtile, who had the king in great eſtimation, and beſides remembred where he was, and knew not what uſe he might have of the king's amity, for that himſelf was new in his eſtate of Spain, and unſettled both with his father-in-law, and with his people, compoſing his countenance, ſaid, "Sir, you give law to me, "but ſo will I to you. You ſhall have him, but (upon your honour) you ſhall "not take his life." The king embracing him, ſaid, "Agreed." Saith the king of Caſtile, "Neither ſhall it diſlike you, if I ſend to him in ſuch a faſhion, "as he may partly come with his own good will." The king ſaid, "It was "well thought of; and if it pleaſed him, he would join with him, in ſending "to the earl a meſſage to that purpoſe." They both ſent ſeverally, and mean while they continued feaſting and paſtimes. The king being (on his part) willing to have the earl ſure before the king of Caſtile went; and the king of Caſtile being as willing to ſeem to be enforced. The king alſo, with many wiſe and excellent perſuaſions, did adviſe the king of Caſtile, to be ruled by the counſel of his father-in-law Ferdinando; a prince ſo prudent, ſo experienced, ſo fortunate. The king of Caſtile (who was in no very good terms with his ſaid father-in-law) anſwered, "That if his father-in-law would ſuffer "him to govern his kingdoms, he ſhould govern him."

There were immediately meſſengers ſent from both kings, to recall the earl of Suffolk; who upon gentle words uſed to him was ſoon charmed, and willing enough to return; aſſured of his life, and hoping of his liberty. He was brought through Flanders to Calais, and thence landed at Dover, and with ſufficient guard delivered and received at the Tower of London. Mean while king Henry

(to

(to draw out the time) continued his feaſtings and entertainments, and after he had received the king of Caſtile into the fraternity of the Garter, and for a reciprocal had his ſon the prince admitted to the order of the Golden Fleece, he accompanied king Philip and his queen to the city of London; where they were entertained with the greateſt magnificence and triumph, that could be upon no greater warning. And as ſoon as the earl of Suffolk had been conveyed to the Tower (which was the ſerious part) the jollities had an end, and the kings took leave. Nevertheleſs during their being here, they in ſubſtance concluded that treaty, which the Flemings term *intercurſus malus*, and bears date at Windſor; for that there be ſome things in it, more to the advantage of the Engliſh, than of them; eſpecially, for that the free-fiſhing of the Dutch upon the coaſts and ſeas of England, granted in the treaty of *undecimo*, was not by this treaty confirmed. All articles that confirm former treaties being preciſely and warily limited and confirmed to matter of commerce only, and not otherwiſe.

It was obſerved, that the great tempeſt which drove Philip into England, blew down the golden eagle from the ſpire of Paul's, and in the fall it fell upon a ſign of the black eagle, which was in Paul's church-yard, in the place where the ſchool-houſe now ſtandeth, and batter'd it, and brake it down: which was a ſtrange ſtooping of a hawk upon a fowl. This the people interpreted to be an ominous prognoſtick upon the imperial houſe, which was (by interpretation alſo) fulfilled upon Philip the emperor's ſon, not only in the preſent diſaſter of the tempeſt, but in that that followed. For Philip arriving into Spain, and attaining the poſſeſſion of the kingdom of Caſtile without reſiſtance (inſomuch as Ferdinando, who had ſpoke ſo great before, was with difficulty admitted to the ſpeech of his ſon-in-law) ſicken'd ſoon after, and deceaſed. Yet after ſuch time, as there was an obſervation by the wiſeſt of that court, that if he had lived, his father would have gained upon him in that ſort, as he would have governed his councils and deſigns, if not his affections. By this all Spain returned into the power of Ferdinando in ſtate as it was before; the rather, in regard of the infirmity of Joan his daughter, who loving her huſband (by whom ſhe had many children) dearly well, and no leſs beloved of him (howſoever her father, to make Philip ill-beloved of the people of Spain, gave out that Philip uſed her not well) was unable in ſtrength of mind to bear the grief of his deceaſe, and fell diſtracted of her wits. Of which malady her father was thought no ways to endeavour the cure, the better to hold his legal power in Caſtile. So that as the felicity of Charles the eighth was ſaid to be a dream; ſo the adverſity of Ferdinando was ſaid likewiſe to be a dream, it paſſed over ſo ſoon.

About this time the king was deſirous to bring into the houſe of Lancaſter celeſtial honour, and became ſuitor to pope Julius, to canonize king Henry the ſixth for a ſaint; the rather, in reſpect of that his famous prediction of the king's own aſſumption to the crown. Julius referred the matter (as the manner is) to certain cardinals, to take the verification of his holy acts and miracles: but it died under the reference. The general opinion was, that pope Julius was too dear, and that the king would not come to his rates. But it is more probable, that that pope (who was extremely jealous of the dignity of the ſee of Rome, and of the acts thereof) knowing that king Henry the ſixth was reputed in the world abroad but for a ſimple man, was afraid it would but diminiſh the eſtimation of that kind of honour, if there were not a diſtance kept between innocents and ſaints.

The ſame year likewiſe there proceeded a treaty of marriage between the king and the lady Margaret ducheſs dowager of Savoy, only daughter to Maximilian, and ſiſter to the king of Caſtile; a lady wiſe, and of great good fame. This matter had been in ſpeech between the two kings at their meeting, but was ſoon after reſumed; and therein was employed for his firſt piece the king's then chaplain, and after the great prelate, Thomas Wolſey. It was in the end concluded, with great and ample conditions for the king, but with promiſe *de futuro* only. It may be the king was the rather induced unto it, for that he heard more and more of the marriage to go on between his great friend and ally Ferdinando of Aragon, and madame de Foix, whereby that king began to piece with the

French king, from whom he had been always before ſevered. So fatal a thing it is, for the greateſt and ſtraiteſt amities of kings at one time or other, to have a little of the wheel: nay, there is a farther tradition (in Spain, though not with us) that the king of Aragon, after he knew that the marriage between Charles the young prince of Caſtile, and Mary the king's ſecond daughter, went roundly on (which though it was firſt moved by the king of Aragon, yet it was afterwards wholly advanced and brought to perfection by Maximilian, and the friends on that ſide) enter'd into a jealouſy, that the king did aſpire to the government of Caſtilia, as adminiſtrator during the minority of his ſon-in-law; as if there ſhould have been a competition of three for that government; Ferdinando, grandfather on the mother's ſide; Maximilian, grandfather on the father's ſide; and king Henry, father-in-law to the young prince. Certainly it is not unlike, but the king's government (carrying the young prince with him) would have been perhaps more welcome to the Spaniards, than that of the other two. For the nobility of Caſtilia, that ſo lately put out the king of Aragon in favour of king Philip, and had diſcovered themſelves ſo far, could not be but in a ſecret diſtruſt and diſtaſte of that king. And as for Maximilian, upon twenty reſpects he could not have been the man. But this purpoſe of the king's ſeemeth to me (conſidering the king's ſafe courſes, never found to be enterprizing or adventurous) not greatly probable, except he ſhould have had a deſire to breathe warmer, becauſe he had ill lungs. This marriage with Margaret was protracted from time to time, in reſpect of the infirmity of the king, who now in the two and twentieth of his reign began to be troubled with the gout: but the defluxion taking alſo into his breaſt, waſted his lungs, ſo that thrice in a year (in a kind of return, and eſpecially in the ſpring) he had great fits and labours of the phthiſick: nevertheleſs, he continued to intend buſineſs with as great diligence, as before in his health: yet ſo, as upon this warning he did likewiſe now more ſeriouſly think of the world to come, and of making himſelf a ſaint, as well as king Henry the ſixth, by treaſure better employed, than to be given to pope Julius: for this year he gave greater alms than accuſtomed, and diſcharged all priſoners about the city, that lay for fees or debts under forty ſhillings. He did alſo make haſte with religious foundations; and in the year following (which was the three and twentieth) finiſhed that of the Savoy. And hearing alſo of the bitter cries of his people againſt the oppreſſions of Dudley and Empſon, and their complices; partly by devout perſons about him, and partly by publick ſermons (the preachers doing their duty therein) he was touched with great remorſe for the ſame. Nevertheleſs Empſon and Dudley, though they could not but hear of theſe ſcruples in the king's conſcience; yet, as if the king's ſoul and his money were in ſeveral offices, that the one was not to intermeddle with the other, went on with as great rage as ever. For the ſame three and twentieth year was there a ſharp proſecution againſt Sir William Capel now the ſecond time; and this was for matters of miſgovernment in his mayoralty: the great matter being, that in ſome payments he had taken knowledge of falſe moneys, and did not his diligence to examine and beat it out, who were the offenders. For this and ſome other things laid to his charge, he was condemned to pay two thouſand pounds; and being a man of ſtomach, and hardened by his former troubles, refuſed to pay a mite; and belike uſed ſome untoward ſpeeches of the proceedings, for which he was ſent to the Tower, and there remained till the king's death. Kneſworth likewiſe, that had been lately mayor of London, and both his ſheriffs, were for abuſes in their offices queſtioned, and impriſoned, and delivered, upon one thouſand four hundred pounds paid. Hawis, an alderman of London, was put in trouble, and died with thought and anguiſh, before his buſineſs came to an end. Sir Lawrence Ailmer, who had likewiſe been mayor of London, and his two ſheriffs, were put to the fine of one thouſand pounds. And Sir Lawrence, for refuſing to make payment, was committed to priſon, where he ſtayed till Empſon himſelf was committed in his place.

It is no marvel (if the faults were ſo light, and the rates ſo heavy) that the king's treaſure of ſtore, that he left at his death, moſt of it in ſecret places,

under his own key and keeping, at Richmond, amounted (as by tradition it is reported to have done) unto the ſum of near eighteen hundred thouſand pounds ſterling; a huge maſs of money even for theſe times.

The laſt act of ſtate that concluded this king's temporal felicity, was the concluſion of a glorious match between his daughter Mary, and Charles prince of Caſtile, afterwards the great emperor, both being of tender years: which treaty was perfected by biſhop Fox, and other his commiſſioners at Calais, the year before the king's death. In which alliance, it ſeemeth, he himſelf took ſo high contentment, as in a letter which he wrote thereupon to the city of London (commanding all poſſible demonſtrations of joy to be made for the ſame) he expreſſeth himſelf, as if he thought he had built a wall of braſs about his kingdom: when he had for his ſons-in-law, a king of Scotland, and a prince of Caſtile and Burgundy. So as now there was nothing to be added to this great king's felicity, being at the top of all worldly bliſs (in regard of the high marriages of his children, his great renown throughout Europe, and his ſcarce credible riches, and the perpetual conſtancy of his proſperous ſucceſſes) but an opportune death, to withdraw him from any future blow of fortune: which certainly (in regard of the great hatred of his people, and the title of his ſon, being then come to eighteen years of age, and being a bold prince, and liberal, and that gained upon the people by his very aſpect and preſence) had not been impoſſible to have come upon him.

To crown alſo the laſt year of his reign, as well as his firſt, he did an act of piety, rare, and worthy to be taken into imitation. For he granted forth a general pardon: as expecting a ſecond coronation in a better kingdom. He did alſo declare in his will, that his mind was, that reſtitution ſhould be made of thoſe ſums which had been unjuſtly taken by his officers.

And thus this Solomon of England (for Solomon alſo was too heavy upon his people in exactions) having lived two and fifty years, and thereof reigned three and twenty years, and eight months, being in perfect memory, and in a moſt bleſſed mind, in a great calm of a conſuming ſickneſs paſſed to a better world, the two and twentieth of April 1508, at his palace of Richmond, which himſelf had built.

THIS king (to ſpeak of him in terms equal to his deſerving) was one of the beſt ſort of wonders; a wonder for wiſe men. He had parts (both in his virtues and his fortune) not ſo fit for a common-place, as for obſervation. Certainly he was religious, both in his affection and obſervance. But as he could ſee clear (for thoſe times) through ſuperſtition, ſo he would be blinded (now and then) by human policy. He advanced church-men; he was tender in the privilege of ſanctuaries, though they wrought him much miſchief. He built and endowed many religious foundations, beſides his memorable hoſpital of the Savoy: and yet was he a great alms-giver in ſecret; which ſhewed, that his works in publick were dedicated rather to God's glory, than his own. He profeſſed always to love and ſeek peace; and it was his uſual preface in his treaties, that when Chriſt came into the world, peace was ſung; and when he went out of the world, peace was bequeathed. And this virtue could not proceed out of fear, or ſoftneſs; for he was valiant and active, and therefore (no doubt) it was truly chriſtian and moral. Yet he knew the way to peace was not to ſeem to be deſirous to avoid wars: therefore would he make offers and fames of wars, till he had mended the conditions of peace. It was alſo much, that one that was ſo great a lover of peace, ſhould be ſo happy in war. For his arms (either in foreign or civil wars) were never unfortunate; neither did he know what a diſaſter meant. The war of his coming in, and the rebellions of the earl of Lincoln, and the lord Audley, were ended by victory. The wars of France and Scotland, by peaces ſought at his hands. That of Britain, by accident of the duke's death. The inſurrection of the lord Lovel, and that of Perkin at Exeter, and in Kent, by flight of the rebels, before they came to blows. So that his fortune of arms was ſtill inviolate: the rather ſure, for that in the

quenching of the commotions of his ſubjects, he ever went in perſon: ſometimes reſerving himſelf to back and ſecond his lieutenants, but ever in action; and yet that was not merely forwardneſs, but partly diſtruſt of others.

He did much maintain and countenance his laws; which (nevertheleſs) was no impediment to him to work his will: for it was ſo handled, that neither prerogative, nor profit went to diminution. And yet as he would ſometimes ſtrain up his laws to his prerogative, ſo would he alſo let down his prerogative to his parliament. For mint, and wars, and martial diſcipline (things of abſolute power) he would nevertheleſs bring to parliament. Juſtice was well adminiſtred in his time, ſave where the king was party: ſave alſo, that the council-table intermeddled too much with *meum* and *tuum*. For it was a very court of juſtice during his time, eſpecially in the beginning; but in that part both of juſtice and policy, which is the durable part, and cut (as it were) in braſs or marble (which is the making of good laws) he did excell. And with his juſtice, he was alſo a merciful prince: as in whoſe time, there were but three of the nobility that ſuffered; the earl of Warwick, the lord chamberlain, and the lord Audley: though the firſt two were inſtead of numbers, in the diſlike and obloquy of the people. But there were never ſo great rebellions, expiated with ſo little blood, drawn by the hand of juſtice, as the two rebellions of Blackheath and Exeter. As for the ſeverity uſed upon thoſe which were taken in Kent, it was but upon a ſcum of people. His pardons went ever both before and after his ſword. But then he had withal a ſtrange kind of interchanging of large and inexpected pardons, with ſevere executions: which (his wiſdom conſidered) could not be imputed to any inconſtancy or inequality; but either to ſome reaſon which we do not now know, or to a principle he had ſet unto himſelf, that he would vary, and try both ways in turn. But the leſs blood he drew, the more he took of treaſure. And (as ſome conſtrued it) he was the more ſparing in the one, that he might be the more preſſing in the other; for both would have been intolerable. Of nature aſſuredly he coveted to accumulate treaſure, and was a little poor in admiring riches. The people (into whom there is infuſed, for the preſervation of monarchies, a natural deſire to diſcharge their princes, though it be with the unjuſt charge of their counſellors and miniſters) did impute this unto cardinal Morton and Sir Reginald Bray: who (as it after appeared) as counſellors of ancient authority with him, did ſo ſecond his humours, as nevertheleſs they did temper them. Whereas Empſon and Dudley that followed, being perſons that had no reputation with him, otherwiſe than by the ſervile following of his bent) did not give way only (as the firſt did) but ſhape him way to thoſe extremities, for which himſelf was touched with remorſe at his death, and which his ſucceſſor renounced, and ſought to purge. This exceſs of his, had at that time many gloſſes and interpretations. Some thought the continual rebellions wherewith he had been vexed, had made him grow to hate his people: ſome thought it was done to pull down their ſtomachs, and to keep them low: ſome, for that he would leave his ſon a golden fleece: ſome ſuſpected he had ſome high deſign upon foreign parts: but thoſe perhaps ſhall come neareſt the truth, that fetch not their reaſons ſo far off; but rather impute it to nature, age, peace, and a mind fixed upon no other ambition or purſuit. Whereunto I ſhould add, that having every day occaſion to take notice of the neceſſities and ſhifts for money of other great princes abroad, it did the better (by compariſon) ſet off to him the felicity of full coffers. As to his expending of treaſure, he never ſpared charge which his affairs required; and in his buildings was magnificent, but his rewards were very limited: ſo that his liberality was rather upon his own ſtate and memory, than upon the deſerts of others.

He was of an high mind, and loved his own will, and his own way; as one that revered himſelf, and would reign indeed. Had he been a private man, he would have been termed proud. But in a wiſe prince, it was but keeping of diſtance, which indeed he did towards all; not admitting any near or full approach, either to his power, or to his ſecrets: for he was governed by none. His queen (notwithſtanding ſhe had preſented him with divers children, and with

with a crown alſo (though he would not acknowledge it) could do nothing with him. His mother he reverenced much, heard little. For any perſon agreeable to him for ſociety (ſuch as was Haſtings to king Edward the fourth, or Charles Brandon after to king Henry the eighth) he had none: except we ſhould account for ſuch perſons, Fox, and Bray, and Empſon, becauſe they were ſo much with him: but it was but as the inſtrument is much with the workman. He had nothing in him of vain-glory, but yet kept ſtate and majeſty to the height; being ſenſible, that majeſty maketh the people bow, but vain-glory boweth to them.

To his confederates abroad he was conſtant and juſt, but not open. But rather ſuch was his enquiry, and ſuch his cloſeneſs, as they ſtood in the light towards him, and he ſtood in the dark to them. Yet without ſtrangeneſs, but with a ſemblance of mutual communication of affairs. As for little envies, or emulations upon foreign princes (which are frequent with many kings) he had never any; but went ſubſtantially to his own buſineſs. Certain it is, that though his reputation was great at home, yet it was greater abroad. For foreigners that could not ſee the paſſages of affairs, but made their judgments upon the iſſues of them, noted that he was ever in ſtrife, and ever aloft. It grew alſo from the airs which the princes and ſtates abroad received from their ambaſſadors and agents here; which were attending the court in great number: whom he did not only content with curteſy, reward, and privateneſs; but (upon ſuch conferences as paſſed with them) put them in admiration, to find his univerſal inſight into the affairs of the world: which though he did ſuck chiefly from themſelves, yet that which he had gathered from them all, ſeemed admirable to every one. So that they did write ever to their ſuperiors in high terms, concerning his wiſdom and art of rule: nay, when they were returned, they did commonly maintain intelligence with him. Such a dexterity he had to impropriate to himſelf all foreign inſtruments.

He was careful and liberal to obtain good intelligence from all parts abroad: wherein he did not only uſe his intereſt in the liegers here, and his penſioners, which he had both in the court of Rome, and other the courts of Chriſtendom; but the induſtry and vigilance of his own ambaſſadors in foreign parts. For which purpoſe his inſtructions were ever extream curious and articulate; and in them more articles touching inquiſition, than touching negotiation. Requiring likewiſe from his ambaſſadors an anſwer, in particular diſtinct articles, reſpectively to his queſtions.

As for his ſecret ſpialls, which he did employ both at home and abroad, by them to diſcover what practices and conſpiracies were againſt him, ſurely his caſe required it; he had ſuch moles perpetually working and caſting to undermine him. Neither can it be reprehended: for if ſpialls be lawful againſt lawful enemies, much more againſt conſpirators and traitors. But indeed to give them credence by oaths or curſes, that cannot be well maintained; for thoſe are too holy veſtments for a diſguiſe. Yet ſurely there was this farther good in his employing of theſe flies and familiars; that as the uſe of them was cauſe that many conſpiracies were revealed, ſo the fame and ſuſpicion of them kept (no doubt) many conſpiracies from being attempted.

Towards his queen he was nothing uxorious, nor ſcarce indulgent; but companiable and reſpective, and without jealouſy. Towards his children he was full of paternal affection, careful of their education, aſpiring to their high advancement, regular to ſee that they ſhould not want of any due honour and reſpect, but not greatly willing to caſt any popular luſtre upon them.

To his council he did refer much, and ſate oft in perſon; knowing it to be the way to aſſiſt his power, and inform his judgment. In which reſpect alſo he was fairly patient of liberty, both of advice, and of vote, till himſelf were declared. He kept a ſtrait hand on his nobility, and choſe rather to advance clergymen and lawyers, which were more obſequious to him, but had leſs intereſt in the people; which made for his abſoluteneſs, but not for his ſafety. Inſomuch as (I am perſuaded) it was one of the cauſes of his troubleſome reign; for that his nobles, though they were loyal and obedient, yet did not co-operate

with him, but let every man go his own way. He was not afraid of an able man, as Lewis the eleventh was: but contrariwiſe, he was ſerved by the ableſt men that were to be found; without which his affairs could not have proſpered as they did. For war, Bedford, Oxford, Surry, D'Aubigny, Brooke, Poynings: For other affairs, Morton, Fox, Bray, the prior of Lanthony, Warham, Urſwick, Huſſey, Frowick, and others. Neither did he care how cunning they were that he did employ; for he thought himſelf to have the maſter-reach. And as he choſe well, ſo he held them up well: for it is a ſtrange thing, that though he were a dark prince, and infinitely ſuſpicious, and his times full of ſecret conſpiracies and troubles; yet in twenty-four years reign, he never put down, or diſcompoſed counſellor, or near ſervant, ſave only Stanley the lord chamberlain. As for the diſpoſition of his ſubjects in general towards him, it ſtood thus with him; that of the three affections, which naturally tie the hearts of the ſubjects to their ſovereigns, love, fear, and reverence; he had the laſt in height, the ſecond in good meaſure, and ſo little of the firſt, as he was beholden to the other two.

He was a prince, ſad, ſerious, and full of thoughts, and ſecret obſervations, and full of notes and memorials of his own hand, eſpecially touching perſons. As, whom to employ, whom to reward, whom to enquire of, whom to beware of, what were the dependencies, what were the factions, and the like; keeping (as it were) a journal of his thoughts. There is to this day a merry tale; that his monkey (ſet on as it was thought by one of his chamber) tore his principal note-book all to pieces, when by chance it lay forth: whereat the court (which liked not thoſe penſive accounts) was almoſt tickled with ſport.

He was indeed full of apprehenſions and ſuſpicions: but as he did eaſily take them, ſo he did eaſily check them and maſter them; whereby they were not dangerous, but troubled himſelf more than others. It is true, his thoughts were ſo many, as they could not well always ſtand together; but that which did good one way, did hurt another. Neither did he at ſome times weigh them aright in their proportions. Certainly, that rumour which did him ſo much miſchief (that the duke of York ſhould be ſaved, and alive) was (at the firſt) of his own nouriſhing; becauſe he would have more reaſon not to reign in the right of his wife. He was affable, and both well and fair-ſpoken; and would uſe ſtrange ſweetneſs and blandiſhments of words, where he deſired to effect or perſuade any thing that he took to heart. He was rather ſtudious than learned; reading moſt books that were of any worth, in the French tongue. Yet he underſtood the Latin, as appeareth in that cardinal Hadrian, and others, who could very well have written French, did uſe to write to him in Latin.

For his pleaſures, there is no news of them: and yet by his inſtructions to Marſin and Stile, touching the queen of Naples, it ſeemeth he could interrogate well touching beauty. He did by pleaſures, as great princes do by banquets, come and look a little upon them, and turn away. For never prince was more wholly given to his affairs, nor in them more of himſelf: inſomuch as in triumphs of juſts and tourneys, and balls, and maſks (which they then called diſguiſes) he was rather a princely and gentle ſpectator, than ſeemed much to be delighted.

No doubt, in him, as in all men (and moſt of all in kings) his fortune wrought upon his nature, and his nature upon his fortune. He attained to the crown, not only from a private fortune, which might endow him with moderation; but alſo from the fortune of an exiled man, which had quickened in him all ſeeds of obſervation and induſtry. And his times being rather proſperous than calm, had raiſed his confidence by ſucceſs, but almoſt marred his nature by troubles. His wiſdom, by often evading from perils, was turned rather into a dexterity to deliver himſelf from dangers, when they preſſed him, than into a providence to prevent and remove them afar off. And even in nature, the ſight of his mind was like ſome ſights of eyes; rather ſtrong at hand, than to carry afar off. For his wit encreaſed upon the occaſion; and ſo much the more, if the occaſion were ſharpened by danger. Again, whether it were the ſhortneſs of his foreſight, or the ſtrength of his will, or the dazling of his ſuſpicions, or

what it was; certain it is, that the perpetual troubles of his fortunes (there being no more matter out of which they grew) could not have been without ſome great defects and main errors in his nature, cuſtoms, and proceedings, which he had enough to do to ſave and help with a thouſand little induſtries and watches. But thoſe do beſt appear in the ſtory it ſelf. Yet take him with all his defects, if a man ſhould compare him with the kings his concurrents in France and Spain, he ſhall find him more politick than Lewis the twelfth of France, and more entire and ſincere than Ferdinando of Spain. But if you ſhall change Lewis the twelfth, for Lewis the eleventh, who lived a little before, then the conſort is more perfect. For that Lewis the eleventh, Ferdinando, and Henry, may be eſteemed for the *tres magi* of kings of thoſe ages. To conclude, if this king did no greater matters, it was long of himſelf; for what he minded he compaſſed.

He was a comely perſonage, a little above juſt ſtature, well and ſtraight limbed, but ſlender. His countenance was reverend, and a little like a churchman: and as it was not ſtrange or dark, ſo neither was it winning or pleaſing, but as the face of one well diſpoſed. But it was to the diſadvantage of the painter, for it was beſt when he ſpake.

His worth may bear a tale or two, that may put upon him ſomewhat that may ſeem divine. When the lady Margaret his mother had divers great ſuitors for marriage, ſhe dreamed one night, that one in the likeneſs of a biſhop in pontifical habit did tender her Edmund earl of Richmond (the king's father) for her huſband, neither had ſhe ever any child but the king, though ſhe had three huſbands. One day, when king Henry the ſixth (whoſe innocency gave him holineſs) was waſhing his hands at a great feaſt, and caſt his eye upon king Henry, then a young youth, he ſaid; "This is the lad that ſhall poſſeſs "quietly that, that we now ſtrive for." But that, that was truly divine in him, was that he had the fortune of a true Chriſtian, as well as of a great king, in living exerciſed, and dying repentant: So as he had an happy warfare in both conflicts, both of ſin, and the croſs.

He was born at Pembroke caſtle, and lieth buried at Weſtminſter, in one of the ſtatelieſt and daintieſt monuments of Europe, both for the chapel, and for the ſepulchre. So that he dwelleth more richly dead, in the monument of his tomb, than he did alive in Richmond, or any of his palaces. I could wiſh he did the like in this monument of his fame.

KING HENRY

A History of the Reign

THE

HISTORY of the REIGN

OF

King HENRY the Eighth.

AFTER the deceaſe of that wiſe and fortunate king, Henry the ſeventh, who died in the height of his proſperity, there followed (as uſeth to do, when the ſun ſetteth ſo exceeding clear) one of the faireſt mornings of a kingdom that hath been known in this land, or any where elſe. A young king, about eighteen years of age, for ſtature, ſtrength, making, and beauty, one of the goodlieſt perſons of his time. And though he were given to pleaſure, yet he was likewiſe deſirous of glory; ſo that there was a paſſage open in his mind, by glory, for virtue. Neither was he unadorned with learning, though therein he came ſhort of his brother Arthur. He had never any the leaſt pique, difference, or jealouſy, with the king his father, which might give any occaſion of altering court or council upon the change; but all things paſſed in a ſtill. He was the firſt heir of the white and the red roſe; ſo that there was no diſcontented party now left in the kingdom, but all mens hearts turned towards him: and not only their hearts, but their eyes alſo; for he was the only ſon of the kingdom. He had no brother; which though it be a comfortable thing for kings to have, yet it draweth the ſubjects eyes a little aſide. And yet being a married man in thoſe young years, it promiſed hope of ſpeedy iſſue to ſucceed in the crown. Neither was there any queen mother, who might ſhare any way in the government, or claſh with his counſellors for authority, while the king intended his pleaſure. No ſuch thing as any great and mighty ſubject, who might any way eclipſe or overſhade the imperial power. And for the people, and ſtate in general, they were in ſuch lowneſs of obedience, as ſubjects were like to yield, who had lived almoſt four and twenty years under ſo politick a king as his father; being alſo one who came partly in by the ſword; and had ſo high a courage in all points of regality; and was ever victorious in rebellions and ſeditions of the people. The crown extremely rich, and full of treaſure, and the kingdom like to be ſo in ſhort time. For there was no war, no dearth, no ſtop of trade, or commerce; it was only the crown which had ſucked too hard, and now being full, and upon the head of a young king, was like to draw leſs. Laſtly, he was inheritor of his father's reputation, which was great throughout the world. He had ſtrait alliance with the two neighbour ſtates, an ancient enemy in former times, and an ancient friend, Scotland and Burgundy. He had peace and amity with France, under the aſſurance, not only of treaty and league, but of neceſſity and inability in the French to do him hurt, in reſpect that the French king's deſigns were wholly bent upon Italy: ſo that it may be truly ſaid, there had ſcarcely been ſeen, or known, in many ages, ſuch a rare concurrence of ſigns and promiſes, of a happy and flouriſhing reign to enſue, as were now met in this young king, called, after his father's name, Henry the eighth. . . . . .

THE BEGINNING OF THE History of Great Britain.

BY the deceaſe of Elizabeth queen of England, the iſſues of king Henry the eighth failed, being ſpent in one generation, and three ſucceſſions. For that king, though he were one of the goodlieſt perſons of his time, yet he left only by his ſix wives three children; who reigning ſucceſſively, and dying childleſs, made place to the line of Margaret, his eldeſt ſiſter, married to James the fourth king of Scotland. There ſucceeded therefore to the kingdom of England James the ſixth then king of Scotland, deſcended of the ſame Margaret both by father and mother: ſo that by a rare event in the pedigrees of kings, it ſeemed as if the divine providence, to extinguiſh and take away all envy and note of a ſtranger, had doubled upon his perſon, within the circle of one age, the royal blood of England by both parents. This ſucceſſion drew towards it the eyes of all men, being one of the moſt memorable accidents that had happened a long time in the Chriſtian world. For the kingdom of France having been reunited in the age before in all the provinces thereof formerly diſmembred; and the kingdom of Spain being, of more freſh memory, united and made entire, by the annexing of Portugal in the perſon of Philip the ſecond; there remained but this third and laſt union, for the counterpoizing of the power of theſe three great monarchies; and the diſpoſing of the affairs of Europe thereby to a more aſſured and univerſal peace and concord. And this event did hold mens obſervations and diſcourſes the more, becauſe the iſland of Great Britain, divided from the reſt of the world, was never before united in itſelf under one king, notwithſtanding the people be of one language, and not ſeparate by mountains or great waters: and notwithſtanding alſo that the uniting of them had been in former times induſtriouſly attempted both by war and treaty. Therefore it ſeemed a manifeſt work of providence, and a caſe of reſervation for theſe times; inſomuch that the vulgar conceived that now there was an end given, and a conſummation to ſuperſtitious prophecies (the belief of fools, but the talk ſometimes of wiſe men) and to an ancient tacit expectation, which had by tradition been infuſed and inveterated into mens minds. But as the beſt divinations and predictions are the politick and probable foreſight and conjectures of wiſe men, ſo in this matter the providence of king Henry the ſeventh was in all mens mouths; who being one of the deepeſt and moſt prudent princes of the world, upon the deliberation concerning the marriage of his eldeſt daughter into Scotland, had by ſome ſpeech uttered by him, ſhewed himſelf ſenſible and almoſt preſcient of this event.

Neither did there want a concurrence of divers rare external circumſtances (beſides the virtues and conditions of the perſon) which gave great reputation to this ſucceſſion. A king in the ſtrength of his years, ſupported with great alliances abroad, eſtabliſhed with royal iſſue at home, at peace with all the world, practiſed in the regiment of ſuch a kingdom, as might rather enable a king by variety of accidents, than corrupt him with affluence or vain-glory; and one

that beſides his univerſal capacity and judgment, was notably exerciſed and practiſed in matters of religion and the church; which in theſe times, by the confuſed uſe of both ſwords, are become ſo intermixed with conſiderations of eſtate, as moſt of the counſels of ſovereign princes or republicks depend upon them: but nothing did more fill foreign nations with admiration and expectation of his ſucceſſion, than the wonderful and (by them) unexpected conſent of all eſtates and ſubjects of England, for the receiving of the king without the leaſt ſcruple, pauſe, or queſtion. For it had been generally diſperſed by the fugitives beyond the ſeas (who, partly to apply themſelves to the ambition of foreigners, and partly to give eſtimation and value to their own employments, uſed to repreſent the ſtate of England in a falſe light) that after queen Elizabeth's deceaſe, there muſt follow in England nothing but confuſions, interreigns, and perturbations of eſtate, likely far to exceed the ancient calamities of the civil wars between the houſes of Lancaſter and York, by how much more the diſſenſions were like to be more mortal and bloody, when foreign competition ſhould be added to domeſtical; and diviſions for religion to matter of title to the crown. And in ſpecial, Parſons the Jeſuit, under a diſguiſed name, had not long before publiſhed an expreſs treatiſe, wherein, whether his malice made him believe his own fancies, or whether he thought it the fitteſt way to move ſedition, like evil ſpirits, which ſeem to foretel the tempeſt they mean to move; he laboured to diſplay and give colour to all the vain pretences and dreams of ſucceſſion which he could imagine; and thereby had poſſeſſed many abroad that knew not the affairs here with thoſe his vanities. Neither wanted there here within this realm, divers perſons both wiſe and well affected, who though they doubted not of the undoubted right, yet ſetting before themſelves the waves of peoples hearts (guided no leſs by ſudden and temporary winds, than by the natural courſe and motion of the waters) were not without fear what might be the event. For queen Elizabeth being a princeſs of extreme caution, and yet one that loved admiration above ſafety; and knowing the declaration of a ſucceſſor might in point of ſafety be diſputable, but in point of admiration and reſpect aſſuredly to her diſadvantage; had from the beginning ſet it down for a maxim of eſtate, to impoſe a ſilence touching ſucceſſion. Neither was it only reſerved as a ſecret of eſtate, but reſtrained by ſevere laws, that no man ſhould preſume to give opinion, or maintain argument touching the ſame: ſo, though the evidence of right drew all the ſubjects of the land to think one thing; yet the fear of danger of law made no man privy to others thought. And therefore it rejoiced all men to ſee ſo fair a morning of a kingdom, and to be thoroughly ſecured of former apprehenſions; as a man that awaketh out of a fearful dream. But ſo it was, that not only the conſent, but the applauſe and joy was infinite, and not to be expreſſed, throughout the realm of England upon this ſucceſſion: whereof the conſent (no doubt) may be truly aſcribed to the clearneſs of the right; but the general joy, alacrity, and gratulation, were the effects of differing cauſes. For queen Elizabeth, although ſhe had the uſe of many both virtues and demonſtrations, that might draw and knit unto her the hearts of her people; yet nevertheleſs carrying a hand reſtrained in gift, and ſtrained in points of prerogative, could not anſwer the votes either of ſervants or ſubjects to a full contentment; eſpecially in her latter days, when the continuance of her reign (which extended to five and forty years) might diſcover in people their natural deſire and inclination towards change; ſo that a new court, and a new reign, were not to many unwelcome. Many were glad, and eſpecially thoſe of ſettled eſtate and fortune, that the fears and uncertainties were overblown, and that the dye was caſt. Others, that had made their way with the king, or offered their ſervice in the time of the former queen, thought now the time was come for which they had prepared: and generally all ſuch as had any dependance upon the late earl of Eſſex (who had mingled the ſervice of his own ends with the popular pretence of advancing the king's title) made account their cauſe was amended. Again, ſuch as might miſdoubt they had given the king any occaſion of diſtaſte, did contend by their forwardneſs and confidence to ſhew, it was but their faſtneſs to the former government, and

that thoſe affections ended with the time. The papiſts nouriſhed their hopes, by collating the caſe of the papiſts in England, and under queen Elizabeth, and the caſe of the papiſts in Scotland under the king; interpreting that the condition of them in Scotland was the leſs grievous, and divining of the king's government here accordingly: beſides the comfort they miniſtred to themſelves from the memory of the queen his mother. The miniſters, and thoſe which ſtood for the preſbytery, thought their cauſe had more ſympathy with the diſcipline of Scotland, than the hierarchy of England, and ſo took themſelves to be a degree nearer their deſires. Thus had every condition of perſons ſome contemplation of benefit, which they promiſed themſelves; over-reaching perhaps, according to the nature of hope, but yet not without ſome probable ground of conjecture. At which time alſo there came forth in print the king's book, entitled Βασιλικὸν Δῶρον: containing matter of inſtruction to the prince his ſon touching the office of a king; which book falling into every man's hand, filled the whole realm, as with a good perfume or incenſe, before the king's coming in: for being excellently written, and having nothing of affectation, it did not only ſatisfy better than particular reports touching the king's diſpoſition, but far exceeded any formal or curious edict or declaration, which could have been deviſed of that nature, wherewith princes in the beginning of their reigns do uſe to grace themſelves, or at leaſt expreſs themſelves gracious in the eyes of their people. And this was for the general the ſtate and conſtitution of mens minds upon this change: the actions themſelves paſſed in this manner.....

The reſt is wanting.

THEOLOGICAL

W O R K S.

A

CONFESSION of FAITH.

Written by the Right Honourable

FRANCIS BACON, Baron of Verulam, &c.

I Believe that nothing is without beginning, but God; no nature, no matter, no ſpirit, but one, only, and the ſame God. That God, as he is eternally almighty, only wiſe, only good, in his nature; ſo he is eternally Father, Son, and Spirit, in perſons.

I believe that God is ſo holy, pure, and jealous, as it is impoſſible for him to be pleaſed in any creature, though the work of his own hands; ſo that neither angel, man, nor world, could ſtand, or can ſtand, one moment in his eyes, without beholding the ſame in the face of a Mediator; and therefore, that before him, with whom all things are preſent, the Lamb of God was ſlain before all worlds; without which eternal counſel of his, it was impoſſible for him to have deſcended to any work of creation; but he ſhould have enjoyed the bleſſed and individual ſociety of three perſons in Godhead for ever.

But that, out of his eternal and infinite goodneſs and love purpoſing to become a Creator, and to communicate to his creatures, he ordained in his eternal counſel, that one perſon of the Godhead ſhould be united to one nature, and to one particular of his creatures; that ſo, in the perſon of the Mediator, the true ladder might be fixed, whereby God might deſcend to his creatures, and his creatures might aſcend to God: ſo that God, by the reconcilement of the Mediator, turning his countenance towards his creatures (though not in equal light and degree) made way unto the diſpenſation of his moſt holy and ſecret will; whereby ſome of his creatures might ſtand, and keep their ſtate; others might poſſibly fall, and be reſtored; and others might fall, and not be reſtored to their eſtate, but yet remain in being, though under wrath and corruption: all with reſpect to the Mediator; which is the great myſtery and perfect center of all God's ways with his creatures, and unto which all his other works and wonders do but ſerve and refer.

That he choſe (according to his good pleaſure) man to be that creature, to whoſe nature the perſon of the eternal Son of God ſhould be united; and amongſt the generations of men, elected a ſmall flock, in whom (by the participation of himſelf) he purpoſed to expreſs the riches of his glory; all the miniſtration of angels, damnation of devils and reprobates, and univerſal adminiſtration of all creatures, and diſpenſation of all times, having no other end, but as the ways and ambages of God, to be further glorified in his ſaints, who are one with their head the Mediator, who is one with God.

That by the virtue of this his eternal counſel he condeſcended of his own good pleaſure, and according to the times and ſeaſons to himſelf known, to become a Creator; and by his eternal Word created all things; and by his eternal Spirit doth comfort and preſerve them.

That he made all things in their firſt eſtate good, and removed from himſelf the beginning of all evil and vanity into the liberty of the creature; but reſerved in himſelf the beginning of all reſtitution to the liberty of his grace; uſing, nevertheleſs, and turning the falling and defection of the creature (which to his preſcience was eternally known) to make way to his eternal counſel, touching a Mediator, and the work he purpoſed to accompliſh in him.

That God created Spirits, whereof ſome kept their ſtanding, and others fell: he created heaven and earth, and all their armies and generations; and gave unto them conſtant and everlaſting laws, which we call nature; which is nothing but the laws of the creation; which laws nevertheleſs have had three changes or times, and are to have a fourth or laſt. The firſt, when the matter of heaven and earth was created without forms: the ſecond, the interim of perfection of every day's work: the third, by the curſe, which notwithſtanding was no new creation: and the laſt, at the end of the world, the manner whereof is not yet fully revealed ſo as the laws of nature, which now remain and govern inviolably till the end of the world, began to be in force when God firſt reſted from his works, and ceaſed to create; but received a revocation, in part, by the curſe; ſince which time they change not.

That notwithſtanding God hath reſted and ceaſed from creating ſince the firſt ſabbath, yet, nevertheleſs, he doth accompliſh and fulfil his divine will in all things, great and ſmall, ſingular and general, as fully and exactly by providence, as he could by miracle and new creation, though his working be not immediate and direct, but by compaſs; not violating nature, which is his own law, upon the creature.

That at the firſt, the ſoul of man was not produced by heaven or earth, but was breathed immediately from God: ſo that the ways and proceedings of God with ſpirits are not included in nature; that is, in the laws of heaven and earth; but are reſerved to the law of his ſecret will and grace: wherein God worketh ſtill, and reſteth not from the work of redemption, as he reſteth from the work of creation; but continueth working till the end of the world: what time that work alſo ſhall be accompliſhed, and an eternal ſabbath ſhall enſue. Likewiſe, that whenſoever God doth tranſcend the law of nature by miracles (which may ever ſeem as new creations) he never cometh to that point or paſs, but in regard of the work of redemption, which is the greater, and whereto all God's ſigns and miracles do refer.

That God created man in his own image, in a reaſonable ſoul, in innocency, in free-will, and in ſovereignty: that he gave him a law and commandment, which was in his power to keep, but he kept it not: that man made a total defection from God, preſuming to imagine that the commandments and prohibitions of God were not the rules of good and evil, but that good and evil had their own principles and beginnings, and luſted after the knowledge of thoſe imagined beginnings, to the end; to depend no more upon God's will revealed, but upon himſelf and his own light, as a God; than the which there could not be a ſin more oppoſite to the whole law of God: that yet, nevertheleſs, this great ſin was not originally moved by the malice of man, but was inſinuated by the ſuggeſtion and inſtigation of the devil, who was the firſt defected creature, and fell of malice, and not by temptation.

That upon the fall of man, death and vanity entered by the juſtice of God; and the image of God in man was defaced; and heaven and earth, which were made for man's uſe, were ſubdued to corruption by his fall; but then that inſtantly, and without intermiſſion of time, after the word of God's law became, through the fall of man, fruſtrate as to obedience, there ſucceeded the greater word of the promiſe, that the righteouſneſs of God might be wrought by faith.

That as well the law of God as the word of his promiſe, endure the ſame for ever: but that they have been revealed in ſeveral manners, according to the diſpenſation of times. For the law was firſt imprinted in that remnant of light of nature, which was left after the fall, being ſufficient to accuſe: then it was more manifeſtly expreſſed in the written law; and was yet more opened by the prophets: and laſtly, expounded in the true perfection by the Son of God, the great Prophet, and perfect interpreter, as alſo fulfiller of the law. That likewiſe the word of the promiſe was manifeſted and revealed: firſt, by immediate revelation and inſpiration; after by figures, which were of two natures: the one, the rites and ceremonies of the law; the other, the continual hiſtory of the old world, and church of the Jews; which though it be literally true, yet

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is it pregnant of a perpetual allegory and ſhadow of the work of the redemption to follow. The ſame promiſe or evangile was more clearly revealed and declared by the prophets, and then by the Son himſelf; and laſtly by the Holy Ghoſt, which illuminateth the church to the end of the world.

That in the fulneſs of time, according to the promiſe and oath, of a choſen lineage deſcended the bleſſed ſeed of the woman, Jeſus Chriſt, the only begotten Son of God and Saviour of the world; who was conceived by the power and over-ſhadowing of the Holy Ghoſt, and took fleſh of the virgin Mary: that the Word did not only take fleſh, or was joined to fleſh, but was made fleſh, though without confuſion of ſubſtance or nature: ſo as the eternal Son of God, and the ever bleſſed Son of Mary was one perſon; ſo one, as the bleſſed virgin may be truly and catholickly called, *Deipara*, the mother of God; ſo one, as there is no unity in univerſal nature, not that of the ſoul and body of man, ſo perfect; for the three heavenly unities (whereof that is the ſecond) exceed all natural unities: that is to ſay, the unity of the three perſons in Godhead; the unity of God and man in Chriſt; and the unity of Chriſt and the church: the Holy Ghoſt being the worker of both theſe latter unities; for by the Holy Ghoſt was Chriſt incarnate and quickened in fleſh, and by the Holy Ghoſt is man regenerate and quickened in ſpirit.

That Jeſus, the Lord, became in the fleſh a ſacrificer, and a ſacrifice for ſin; a ſatisfaction and price to the juſtice of God; a meriter of glory and the kingdom; a pattern of all righteouſneſs; a preacher of the word which himſelf was; a finiſher of the ceremony; a corner-ſtone to remove the ſeparation between Jew and Gentile; an interceſſor for the church; a lord of nature in his miracles; a conqueror of death and the power of darkneſs in his reſurrection; and that he fulfilled the whole counſel of God, performing all his ſacred offices, and anointing on earth; accompliſhed the whole work of the redemption and reſtitution of man to a ſtate ſuperior to the angels (whereas the ſtate of man by creation was inferior) and reconciled and eſtabliſhed all things according to the eternal will of the Father.

That in time Jeſus the Lord was born in the days of Herod, and ſuffered under the government of Pontius Pilate, being deputy of the Romans, and under the high prieſthood of Caiaphas, and was betrayed by Judas, one of the twelve apoſtles, and was crucified at Hieruſalem; and after a true and natural death, and his body laid in the ſepulchre, the third day he raiſed himſelf from the bonds of death, and aroſe and ſhewed himſelf to many choſen witneſſes, by the ſpace of divers days; and at the end of thoſe days, in the ſight of many, aſcended into heaven; where he continueth his interceſſion; and ſhall from thence, at the day appointed, come in greateſt glory to judge the world.

That the ſufferings and merits of Chriſt, as they are ſufficient to do away the ſins of the whole world, ſo they are only effectual to thoſe which are regenerate by the Holy Ghoſt; who breatheth where he will of free grace; which grace, as a ſeed incorruptible, quickeneth the ſpirit of man, and conceiveth him anew a ſon of God and member of Chriſt: ſo that Chriſt having man's fleſh, and man having Chriſt's ſpirit, there is an open paſſage and mutual imputation, whereby ſin and wrath was conveyed to Chriſt from man; and merit and life is conveyed to man from Chriſt: which ſeed of the Holy Ghoſt firſt figureth in us the image of Chriſt ſlain or crucified, through a lively faith; and then reneweth in us the image of God in holineſs and charity; though both imperfectly, and in degrees far differing even in God's elect, as well in regard of the fire of the Spirit, as of the illumination thereof; which is more or leſs in a large proportion: as namely, in the church before Chriſt; which yet nevertheleſs was partaker of one and the ſame ſalvation with us, and of one and the ſame means of ſalvation with us.

That the work of the Spirit, though it be not tied to any means in heaven or earth, yet it is ordinarily diſpenſed by the preaching of the word; the adminiſtration of the ſacraments; the covenants of the fathers upon the children, prayer, reading; the cenſures of the church; the ſociety of the godly; the croſs and afflictions; God's benefits; his judgments upon others; miracles; the con-

templation of his creatures: All which (though ſome be more principal) God uſeth as the means of vocation and converſion of his elect; not derogating from his power to call immediately by his grace, and at all hours and moments of the day (that is, of man's life) according to his good pleaſure.

That the word of God, whereby his will is revealed, continued in revelation and tradition until Moſes; and that the Scriptures were from Moſes's time to the times of the apoſtles and evangeliſts; in whoſe age, after the coming of the Holy Ghoſt, the teacher of all truth, the book of the Scriptures was ſhut and cloſed, ſo as not to receive any new addition; and that the church hath no power over the Scriptures to teach or command any thing contrary to the written word, but is as the ark, wherein the tables of the firſt teſtament were kept and preſerved; that is to ſay, the church hath only the cuſtody and delivery over of the Scriptures committed unto the ſame; together with the interpretation of them, but ſuch only as is conceived from themſelves.

That there is an univerſal or catholick church of God, diſperſed over the face of the earth, which is Chriſt's ſpouſe, and Chriſt's body; being gathered of the fathers of the old world, of the church of the Jews, of the ſpirits of the faithful diſſolved, and the ſpirits of the faithful militant, and of the names yet to be born, which are already written in the book of life. That there is alſo a viſible church, diſtinguiſhed by the outward works of God's covenant, and the receiving of the holy doctrine, with the uſe of the myſteries of God, and the invocation and ſanctification of his holy name. That there is alſo an holy ſucceſſion in the prophets of the new teſtament and fathers of the church, from the time of the apoſtles and diſciples which ſaw our Saviour in the fleſh, unto the conſummation of the work of the miniſtry; which perſons are called from God by gift, or inward anointing; and the vocation of God followed by an outward calling and ordination of the church.

I believe, that the ſouls of ſuch as die in the Lord are bleſſed, and reſt from their labours, and enjoy the ſight of God; yet ſo, as they are in expectation of a farther revelation of their glory in the laſt day. At which time all fleſh of man ſhall ariſe and be changed, and ſhall appear and receive from Jeſus Chriſt his eternal judgment; and the glory of the ſaints ſhall then be full; and the kingdom ſhall be given up to God the Father: from which time all things ſhall continue for ever in that being and ſtate, which then they ſhall receive. So as there are three times (if times they may be called) or parts of eternity: The firſt, the time before beginnings, when the Godhead was only, without the being of any creature: the ſecond, the time of the myſtery, which continueth from the creation to the diſſolution of the world: and the third, the time of the revelation of the ſons of God; which time is the laſt, and is everlaſting without change.

A PRAYER or PSALM

Made by the

Lord BACON, Chancellor of ENGLAND.

MOST gracious Lord God, my merciful Father, from my youth up, my Creator, my Redeemer, my Comforter. Thou, O Lord, ſoundeſt and ſearcheſt the depths and ſecrets of all hearts: thou acknowledgeſt the upright of heart: thou judgeſt the hypocrite: thou pondereſt mens thoughts and doings as in a balance: thou meaſureſt their intentions as with a line; vanity and crooked ways cannot be hid from thee.

Remember, O Lord, how thy ſervant hath walked before thee: remember what I have firſt ſought, and what hath been principal in my intentions. I have loved thy aſſemblies: I have mourned for the diviſions of thy church: I have delighted in the brightneſs of thy ſanctuary. This vine which thy right hand hath planted in this nation, I have ever prayed unto thee, that it might have the firſt and the latter rain; and that it might ſtretch her branches to the ſeas and to the floods. The ſtate and bread of the poor and oppreſſed have been precious in mine eyes: I have hated all cruelty and hardneſs of heart: I have (though in a deſpiſed weed) procured the good of all men. If any have been my enemies, I thought not of them; neither hath the ſun almoſt ſet upon my diſpleaſure; but I have been as a dove, free from ſuperfluity of maliciouſneſs. Thy creatures have been my books, but thy Scriptures much more. I have ſought thee in the courts, fields, and gardens, but I have found thee in thy temples.

Thouſands have been my ſins, and ten thouſands my tranſgreſſions; but thy ſanctifications have remained with me, and my heart (through thy grace) hath been an unquenched coal upon thine altar. O Lord, my ſtrength, I have ſince my youth met with thee in all my ways, by thy fatherly compaſſions, by thy comfortable chaſtiſements, and by thy moſt viſible providence. As thy favours have encreaſed upon me, ſo have thy corrections; ſo as thou haſt been always near me, O Lord; and ever as my worldly bleſſings were exalted, ſo ſecret darts from thee have pierced me; and when I have aſcended before men, I have deſcended in humiliation before thee. And now, when I thought moſt of peace and honour, thy hand is heavy upon me, and hath humbled me according to thy former loving-kindneſs, keeping me ſtill in thy fatherly ſchool, not as a baſtard but as a child. Juſt are thy judgments upon me for my ſins, which are more in number than the ſands of the ſea, but have no proportion to thy mercies; for what are the ſands of the ſea, earth, heavens, and all theſe are nothing to thy mercies. Beſides my innumerable ſins, I confeſs before thee, that I am debtor to thee for the gracious talent of thy gifts and graces, which I have neither put into a napkin, nor put it (as I ought) to exchangers, where it might have made beſt profit, but miſpent it in things for which I was leaſt fit: ſo I may truly ſay, my ſoul hath been a ſtranger in the courſe of my pilgrimage. Be merciful unto me, O Lord, for my Saviour's ſake, and receive me into thy boſom, or guide me in thy ways.

A PRAYER

Made and uſed by the Lord Chancellor BACON.

O Eternal God, and moſt merciful Father in Jeſus Chriſt: Let the words of our mouths, and the meditations of our hearts be now and ever gracious in thy ſight, and acceptable unto thee, O Lord, our God, our ſtrength, and our redeemer.

O Eternal God, and moſt merciful Father in Jeſus Chriſt, in whom thou haſt made a covenant of grace and mercy with all thoſe that come unto thee in him; in his name and mediation we humbly proſtrate ourſelves before the throne of thy mercies ſeat, acknowledging, that by the breach of all thy holy laws and commandments we are become wild olive-branches, ſtrangers to thy covenant of grace; we have defaced in ourſelves thy ſacred image imprinted in us by creation; we have ſinned againſt heaven, and before thee, and are no more worthy to be called thy children. O admit us into the place even of hired ſervants. Lord, thou haſt formed us in our mothers wombs, thy providence hath hitherto watched over us, and preſerved us unto this period of time: O ſtay not the courſe of thy mercies and loving-kindneſs towards us: have mercy upon us, O Lord, for thy dear Son Chriſt Jeſus ſake, who is the way, the truth, and the life. In him, O Lord, we appeal from thy juſtice to thy mercy, beſeeching thee in his name, and for his ſake only, thou wilt be graciouſly pleaſed freely to pardon, and forgive us all our ſins and diſobedience, whether in thought, word, or deed, committed againſt thy divine Majeſty; and in his precious blood-ſhedding death, and perfect obedience, free us from the guilt, the ſtain, the puniſhment, and dominion of all our ſins, and clothe us with his perfect righteouſneſs. There is mercy with thee, O Lord, that thou mayſt be feared; yea, thy mercies ſwallow up the greatneſs of our ſins: ſpeak peace to our ſouls and conſciences; make us happy in the free remiſſion of all our ſins, and be reconciled to thy poor ſervants in Jeſus Chriſt, in whom thou art well pleaſed: ſuffer not the works of thine own hands to periſh; thou art not delighted in the death of ſinners, but in their converſion. Turn our hearts, and we ſhall be turned; convert us, and we ſhall be converted; illuminate the eyes of our minds and underſtanding with the bright beams of thy Holy Spirit, that we may daily grow in the ſaving knowledge of the heavenly myſtery of our redemption, wrought by our dear Lord and Saviour Jeſus Chriſt; ſanctify our wills and affection by the ſame Spirit, the moſt ſacred fountain of all grace and goodneſs; reduce them to the obedience of thy moſt holy will in the practice of all piety toward thee, and charity towards all men. Inflame our hearts with thy love, caſt forth of them what diſpleaſeth thee, all infidelity, hardneſs of heart, prophaneneſs, hypocriſy, contempt of thy holy word and ordinances, all uncleanneſs, and whatſoever advanceth itſelf in oppoſition to thy holy will. And grant that henceforth, through thy grace, we may be enabled to lead a godly, holy, ſober, and chriſtian life in true ſincerity and uprightneſs of heart before thee. To this end, plant thy holy fear in our hearts, grant that it may never depart from before our eyes, but continually guide our feet in the paths of thy righteouſneſs, and in the ways of thy commandments: increaſe our weak faith, grant it may daily bring forth the true fruits of unfeigned repentance, that by the power of the death of our Lord and Saviour Jeſus Chriſt we may daily die unto ſin, and by the power of his reſurrection we may be quickened, and raiſed up to newneſs of life, may be truly born anew, and may be effectually made partakers of the firſt reſurrection, that then the ſecond death may never have dominion over us. Teach us, O Lord, ſo to number our days, that we may apply our hearts unto wiſdom; make us ever mindful of our laſt end, and continually to exerciſe the knowledge of grace in our hearts, that in

the ſaid divorce of ſoul and body, we may be tranſlated here to that kingdom of glory prepared for all thoſe that love thee, and ſhall truſt in thee; even then and ever, O Lord, let thy holy angels pitch their tents round about us, to guard and defend us from all the malice of Satan, and from all perils both of ſoul and body. Pardon all our unthankfulneſs, make us daily more and more thankful for all thy mercies and benefits daily poured down upon us. Let theſe our humble prayers aſcend to the throne of grace, and be granted not only for theſe mercies, but for whatſoever elſe thy wiſdom knows needful for us; and for all thoſe that are in need, miſery, and diſtreſs, whom, Lord, thou haſt afflicted either in ſoul or body; grant them patience and perſeverance in the end, and to the end: And that, O Lord, not for any merits of ours, but only for the merits of thy Son, and our alone Saviour Chriſt Jeſus; to whom with thee, and the Holy Spirit, be aſcribed all glory, &c. *Amen.*

The STUDENT's PRAYER.

TO God the Father, God the Word, God the Spirit, we pour forth moſt humble and hearty ſupplications; that he remembring the calamities of mankind, and the pilgrimage of this our life, in which we wear out days few and evil, would pleaſe to open to us new refreſhments out of the fountains of his goodneſs, for the alleviating of our miſeries. This alſo we humbly and earneſtly beg, that human things may not prejudice ſuch as are divine; neither that from the unlocking of the gates of ſenſe, and the kindling of a greater natural light, any thing of incredulity, or intellectual night, may ariſe in our minds towards divine myſteries. But rather, that by our mind thoroughly cleanſed and purged from fancy and vanities, and yet ſubject and perfectly given up to the divine oracles, there may be given unto faith the things that are faith's. *Amen.*

The WRITER's PRAYER.

THOU, O Father, who gaveſt the viſible light as the firſt-born of thy creatures, and didſt pour into man the intellectual light as the top and conſummation of thy workmanſhip, be pleaſed to protect and govern this work, which coming from thy goodneſs, returneth to thy glory. Thou after thou hadſt reviewed the works which thy hands had made, beheldeſt that every thing was very good, and thou didſt reſt with complacency in them. But man reflecting on the works which he had made, ſaw that all was vanity and vexation of ſpirit, and could by no means acquieſce in them. Wherefore if we labour in thy works with the ſweat of our brows, thou wilt make us partakers of thy viſion and thy ſabbath. We humbly beg that this mind may be ſtedfaſtly in us; and that thou, by our hands, and alſo by the hands of others, on whom thou ſhalt beſtow the ſame ſpirit, wilt pleaſe to convey a largeſs of new alms to thy family of mankind. Theſe things we commend to thy everlaſting love, by our Jeſus, thy Chriſt, God with us. *Amen.*

THE CHARACTERS OF A BELIEVING CHRISTIAN,

In PARADOXES, and ſeeming Contradictions.

1. A Chriſtian is one that believes things his reaſon cannot comprehend; he hopes for things which neither he nor any man alive ever ſaw: he labours for that which he knoweth he ſhall never obtain; yet in the iſſue, his belief appears not to be falſe; his hope makes him not aſhamed; his labour is not in vain.

2. He believes three to be one, and one to be three; a father not to be elder than his ſon; a ſon to be equal with his father; and one proceeding from both to be equal with both; he believing three perſons in one nature, and two natures in one perſon.

3. He believes a virgin to be a mother of a ſon; and that very ſon of hers to be her maker. He believes him to have been ſhut up in a narrow room, whom heaven and earth could not contain. He believes him to have been born in time, who was and is from everlaſting. He believes him to have been a weak child carried in arms, who is the Almighty; and him once to have died, who only hath life and immortality in himſelf.

4. He believes the God of all grace to have been angry with one that hath never offended him; and that God, that hates ſin, to be reconciled to himſelf, though ſinning continually, and never making, or being able to make him ſatisfaction. He believes a moſt juſt God to have puniſhed a moſt juſt perſon, and to have juſtified himſelf though a moſt ungodly ſinner. He believes himſelf freely pardoned, and yet a ſufficient ſatisfaction was made for him.

5. He believes himſelf to be precious in God's ſight, and yet loaths himſelf in his own. He dares not juſtify himſelf even in thoſe things wherein he can find no fault with himſelf, and yet believes God accepts him in thoſe ſervices wherein he is able to find many faults.

6. He praiſes God for his juſtice, and yet fears him for his mercy. He is ſo aſhamed as that he dares not open his mouth before God; and yet he comes with boldneſs to God, and aſks him any thing he needs. He is ſo humble as to acknowledge himſelf to deſerve nothing but evil; and yet believes that God means him all good. He is one that fears always, yet is as bold as a lion. He is often ſorrowful, yet always rejoicing; many times complaining, yet always giving of thanks. He is the moſt lowly-minded, yet the greateſt aſpirer; moſt contented, yet ever craving.

7. He bears a lofty ſpirit in a mean condition; when he is ableſt he thinks meaneſt of himſelf. He is rich in poverty, and poor in the midſt of riches. He believes all the world to be his, yet he dares take nothing without ſpecial leave from God. He covenants with God for nothing, yet looks for a great reward. He loſeth his life and gains by it; and whilſt he loſeth it, he ſaveth it.

8. He lives not to himſelf, yet of all others he is moſt wiſe for himſelf. He denieth himſelf often, yet no man loveth himſelf ſo well as he. He is moſt reproached, yet moſt honoured. He hath moſt afflictions, and moſt comforts.

9. The more injury his enemies do him, the more advantages he gains by them. The more he forſakes worldly things, the more he enjoys them.

10. He is the moſt temperate of all men, yet fares moſt deliciouſly; he lends and gives moſt freely, yet he is the greateſt uſurer; he is meek towards all men, yet inexorable by men. He is the beſt child, huſband, brother, friend; yet hates father and mother, brother and ſiſter. He loves all men as himſelf, yet hates ſome men with a perfect hatred.

11. He deſires to have more grace than any man hath in the world, yet is truly ſorrowful when he ſeeth any man have leſs than himſelf; he knoweth no man after the fleſh, yet gives all men their due reſpects; he knoweth if he pleaſe man he cannot be the ſervant of Chriſt; yet for Chriſt's ſake he pleaſeth all men in all things. He is a peace-maker, yet is a continual fighter, and is an irreconcilable enemy.

12. He believes him to be worſe than an infidel that provides not for his family, yet himſelf lives and dies without care. He accounts all his ſuperiors, yet ſtands ſtiffly upon authority. He is ſevere to his children, becauſe he loveth them; and by being favourable unto his enemy, he revengeth himſelf upon him.

13. He believes the angels to be more excellent creatures than himſelf, and yet accounts them his ſervants. He believes that he receives many good things by their means, and yet he neither prays for their aſſiſtance, nor offers them thanks, which he doth not diſdain to do to the meaneſt Chriſtian.

14. He believes himſelf to be a King, how mean ſoever he be; and how great ſoever he be, yet he thinks himſelf not too good to be a ſervant to the pooreſt ſaint.

15. He is often in priſon, yet always at liberty: a freeman though a ſervant. He loves not honour amongſt men, yet highly prizeth a good name.

16. He believes that God hath bidden every man that doth him good, to do ſo; he yet of any man is the moſt thankful to them that do aught for him. He would lay down his life to ſave the ſoul of his enemy, yet will not adventure upon one ſin to ſave the life of him who ſaved his.

17. He ſwears to his own hindrance, and changeth not; yet knoweth that his oath cannot tie him to ſin.

18. He believes Chriſt to have no need of any thing he doth, yet maketh account that he doth relieve Chriſt in all his acts of charity. He knoweth he can do nothing of himſelf, yet labours to work out his own ſalvation. He profeſſeth he can do nothing, yet as truly profeſſeth he can do all things: he knoweth that fleſh and blood cannot inherit the kingdom of God, yet believeth he ſhall go to heaven both body and ſoul.

19. He trembles at God's word, yet counts it ſweeter to him than honey, and the honey-comb, and dearer than thouſands of gold and ſilver.

20. He believes that God will never damn him, and yet fears God for being able to caſt him into hell. He knoweth he ſhall not be ſaved by, nor for his good works, yet he doth all the good works he can.

21. He knoweth God's providence is in all things, yet is ſo diligent in his calling and buſineſs, as if he were to cut out the thread of his happineſs. He believes before-hand that God hath purpoſed what he ſhall be, and that nothing can make him to alter his purpoſe; yet prays and endeavours, as if he would force God to ſave him for ever.

22. He prays and labours for that which he is confident God means to give; and the more aſſured he is, the more earneſt he prays for that he knows he ſhall never obtain, and yet gives not over. He prays and labours for that which he knows he ſhall be no leſs happy without; he prays with all his heart not to be led into temptation, yet rejoiceth when he is fallen into it; he believes his prayers are heard, even when they are denied, and gives thanks for that which he prays againſt.

23. He hath within him both fleſh and ſpirit, yet he is not a double-minded man; he is often led captive by the law of ſin, yet it never gets dominion over him; he cannot ſin, yet can do nothing without ſin. He doth nothing againſt

his will, yet maintains he doth what he would not. He wavers and doubteth, yet obtains.

24. He is often toſſed and ſhaken, yet is as mount Sion; he is a ſerpent and a dove; a lamb and a lion; a reed and a cedar. He is ſometimes ſo troubled, that he thinks nothing to be true in religion; yet if he did think ſo, he could not at all be troubled. He thinks ſometimes that God hath no mercy for him, yet reſolves to die in the purſuit of it. He believes, like Abraham, againſt hope, and though he cannot anſwer God's logick, yet, with the woman of Canaan, he hopes to prevail with the rhetorick of importunity.

25. He wreſtles, and yet prevails; and though yielding himſelf unworthy of the leaſt bleſſing he enjoys, yet, Jacob-like, he will not let him go without a new bleſſing. He ſometimes thinks himſelf to have no grace at all, and yet how poor and afflicted ſoever he be beſides, he would not change conditions with the moſt proſperous man under heaven, that is a manifeſt worldling.

26. He thinks ſometimes that the ordinances of God do him no good, yet he would rather part with his life than be deprived of them.

27. He was born dead; yet ſo that it had been murder for any to have taken his life away. After he began to live, he was ever dying.

28. And though he hath an eternal life begun in him, yet he makes account he hath a death to paſs through.

29. He counts ſelf-murder a heinous ſin, yet is ever buſied in crucifying the fleſh, and in putting to death his earthly members; not doubting, but there will come a time of glory, when he ſhall be eſteemed precious in the ſight of the great God of heaven and earth, appearing with boldneſs at his throne, and aſking any thing he needs; being endued with humility, by acknowledging his great crimes and offences, and that he deſerveth nothing but ſevere puniſhment.

30. He believes his ſoul and body ſhall be as full of glory, as them that have more; and no more full, than theirs that have leſs.

31. He lives inviſible to thoſe that ſee him, and thoſe that know him beſt do but gueſs at him; yet thoſe many times judge more truly of him than he doth of himſelf.

32. The world will ſometimes account him a ſaint, when God accounteth him a hypocrite; and afterwards, when the world branded him for an hypocrite, then God owned him for a ſaint.

33. His death makes not an end of him. His ſoul which was put into his body, is not to be perfected without his body; yet his ſoul is more happy, when it is ſeparated from his body, than when it was joined unto it: And his body, though torn in pieces, burnt to aſhes, ground to powder, turned to rottenneſs, ſhall be no loſer.

34. His advocate, his ſurety ſhall be his judge; his mortal part ſhall become immortal; and what was ſown in corruption and defilement ſhall be raiſed in incorruption and glory; and a finite creature ſhall poſſeſs an infinite happineſs. Glory be to God.

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IT is but ignorance, if any man find it ſtrange, that the ſtate of religion (eſpecially in the days of peace) ſhould be exerciſed and troubled with controverſies: for as it is the condition of the church militant to be ever under trials, ſo it cometh to paſs, that when the fiery trial of perſecution ceaſeth, there ſucceedeth another trial, which (as it were) by contrary blaſts of doctrine, doth ſift and winnow mens faith, and proveth whether they know God aright; even as that other of afflictions diſcovereth whether they love him better than the world. Accordingly was it foretold by Chriſt, ſaying, *that in the later times it ſhould be ſaid, Lo here, lo there is Chriſt:* which is to be underſtood, not as if the very perſon of Chriſt ſhould be aſſumed and counterfeited, but his authority and pre-eminence (which is to be the truth itſelf) ſhould be challenged and pretended. Thus have we read and ſeen to be fulfilled that which followeth, *Ecce in deſerto, ecce in penetralibus:* while ſome have ſought the truth in the conventicles and conciliables of hereticks and ſectaries; others in the external face and repreſentation of the church; and both ſorts have been ſeduced. Were it then that the controverſies of the church of England were ſuch, as they did divide the unity of the ſpirit, and not only ſuch as do unſwathe her of her bands (the bands of peace) yet could it be no occaſion for any pretended catholick to judge us, or for any irreligious perſon to deſpiſe us; or if it be, it ſhall but happen to us all as it hath uſed to do; to them to be hardened, and to us to endure the good pleaſure of God. But now that our contentions are ſuch, as we need not ſo much that general canon and ſentence of Chriſt pronounced againſt hereticks; *Erratis, neſcientes Scripturas, et poteſtatem Dei*; you do err, not knowing the Scripture, and the power of God: as we need the admonition of St. James, *Let every man be ſwift to hear, ſlow to ſpeak, ſlow to wrath*; and that the wound is no way dangerous, except we poiſon it with our remedies: as the former ſort of men have leſs reaſon to make themſelves muſick in our diſcord, ſo I have good hope that nothing ſhall diſpleaſe ourſelves, which ſhall be ſincerely and modeſtly propounded for the appeaſing of theſe diſſentions. For if any ſhall be offended at this voice, *Vos eſtis fratres*; ye are brethren, why ſtrive ye? he ſhall give a great preſumption againſt himſelf, that he is the party that doth his brethren wrong.

The controverſies themſelves I will not enter into, as judging that the diſeaſe requireth rather reſt than any other cure. Thus much we all know and confeſs, that they be not of the higheſt nature, for they are not touching the high myſteries of faith, ſuch as detained the churches for many years after their firſt peace, what time the hereticks moved curious queſtions, and made ſtrange anatomies of the natures and perſon of Chriſt; and the catholick fathers were compelled to follow them with all ſubtlety of deciſions and determinations to exclude them from their evaſions, and to take them in their labyrinths; ſo as it is rightly ſaid, *illis temporibus, ingenioſa res fuit, eſſe Chriſtianum*; in thoſe days it was an ingenious and ſubtle thing to be a Chriſtian.

Neither

Neither are they concerning the great parts of the worſhip of God, of which it is true, that *non ſervatur unitas in credendo, niſi eadem adſit in colendo*; there will be kept no unity in believing, except it be entertained in worſhipping; ſuch as were the controverſies of the eaſt and weſt churches touching images, and ſuch as are many of thoſe between the church of Rome and us; as about the adoration of the Sacrament, and the like; but we contend about ceremonies, and things indifferent, about the external policy and government of the church: in which kind, if we would but remember that the ancient and true bonds of unity are *one faith, one baptiſm*, and not one ceremony, one policy; if we would obſerve the league amongſt Chriſtians that is penned by our Saviour, *he that is not againſt us is with us*; if we could but comprehend that ſaying, *differentiae rituum commendant unitatem doctrinae*; the diverſities of ceremonies do ſet forth the unity of doctrine; and that *habet religio quae ſunt aeternitatis, habet quae ſunt temporis*; religion hath parts which belong to eternity, and parts which pertain to time: and if we did but know the virtue of ſilence, and ſlowneſs to ſpeak, commended by St. James, our controverſies of themſelves would cloſe up and grow together: but moſt eſpecially, if we would leave the overweaning and turbulent humours of theſe times, and revive the bleſſed proceeding of the Apoſtles and Fathers of the primitive church, which was, in the like and greater caſes not to enter into aſſertions and poſitions, but to deliver counſels and advices, we ſhould need no other remedy at all; *ſi eadem conſulis (frater) quae affirmas, conſulenti debetur reverentia, cum non debeatur fides affirmanti*; brother, if that which you ſet down as an aſſertion, you would deliver by way of advice, there were reverence due to your counſel, whereas faith is not due to your affirmation. St. Paul was content to ſpeak thus, *Ego, non Dominus*, I, and not the Lord: *Et, ſecundum conſilium meum*; according to my counſel. But now men do too lightly ſay, *Non ego, ſed Dominus*; not I, but the Lord: yea, and bind it with an heavy denunciation of his judgments, to terrify the ſimple, which have not ſufficiently underſtood out of Solomon, that *the cauſeleſs curſe ſhall not come.*

Therefore ſeeing the accidents are they which breed the peril, and not the things themſelves in their own nature, it is meet the remedies be applied unto them, by opening what it is on either part, that keepeth the wound green, and formalizeth both ſides to a farther oppoſition, and worketh an indiſpoſition in mens minds to be reunited: wherein no accuſation is pretended; but I find in reaſon, that peace is beſt built upon a repetition of wrongs; and in example, that the ſpeeches which have been made by the wiſeſt men, *de concordia ordinum*, have not abſtained from reducing to memory the extremities uſed on both parts; ſo as it is true which is ſaid, *Qui pacem tractat non repetitis conditionibus diſſidii, is magis animos hominum dulcedine pacis fallit, quam aequitate componit.*

And firſt of all, it is more than time that there were an end and ſurceaſe made of this immodeſt and deformed manner of writing lately entertained, whereby matter of religion is handled in the ſtyle of the ſtage. Indeed, bitter and earneſt writing muſt not haſtily be condemned; for men cannot contend coldly, and without affection, about things which they hold dear and precious. A politick man may write from his brain, without touch and ſenſe of his heart; as in a ſpeculation that appertaineth not unto him; but a feeling Chriſtian will expreſs in his words a character of zeal or love. The latter of which, as I could wiſh rather embraced, being more proper for theſe times, yet is the former warranted alſo by great examples.

But to leave all reverent and religious compaſſion towards evils, or indignation towards faults, and to turn religion into a comedy or ſatire; to ſearch and rip up wounds with a laughing countenance, to intermix Scripture and ſcurrility ſometime in one ſentence, is a thing far from the devout reverence of a Chriſtian, and ſcant beſeeming the honeſt regard of a ſober man. *Non eſt major confuſio, quam ſerii et joci.* There is no greater confuſion, than the confounding of jeſt and earneſt. The majeſty of religion, and the contempt and deformity of things ridiculous, are things as diſtant as things may be. Two principal cauſes

have I ever known of atheiſm; curious controverſies, and prophane ſcoffing: now that theſe two are joined in one, no doubt that ſect will make no ſmall progreſſion.

And here I do much eſteem the wiſdom and religion of that biſhop which replied to the firſt pamphlet of this kind, who remembred that a fool was to be anſwered, but not by becoming like unto him; and conſidered the matter which he handled, and not the perſon with whom he dealt.

Job, ſpeaking of the majeſty and gravity of a judge in himſelf, ſaith, *If I did ſmile, they believed it not:* as if he ſhould have ſaid, If I diverted, or glanced upon conceit of mirth, yet mens minds were ſo poſſeſſed with a reverence of the action in hand, as they could not receive it. Much more ought not this to be amongſt biſhops and divines diſputing about holy things. And therefore as much do I miſlike the invention of him who (as it ſeemeth) pleaſed himſelf in it as in no mean policy, that theſe men are to be dealt withal at their own weapons, and pledged in their own cup. This ſeemed to him as profound a device, as when the cardinal Sanſovino counſelled Julius the ſecond to encounter the council of Piſa with the council of Lateran; or as lawful a challenge as Mr. Jewel made to confute the pretended catholicks by the Fathers: but thoſe things will not excuſe the imitation of evil in another. It ſhould be contrariwiſe with us, as Cæſar ſaid, *Nil malo, quam eos ſimiles eſſe ſui, et me mei.* But now, *Dum de bonis contendimus, de malis conſentimus*; while we differ about good things, we reſemble in evil.

Surely, if I were aſked of theſe men, who were the more to be blamed; I ſhould percaſe remember the proverb, that the ſecond blow maketh the fray and the ſaying of an obſcure fellow; *Qui replicat, multiplicat*; he that replieth, multiplieth. But I would determine the queſtion with this ſentence; *Alter principium malo dedit, alter modum abſtulit*; by the one means we have a beginning, and by the other we ſhall have none end.

And truly, as I do marvel that ſome of thoſe preachers which call for reformation (whom I am far from wronging ſo far, as to join them with theſe ſcoffers) do not publiſh ſome declaration, whereby they may ſatisfy the world, that they diſlike their cauſe ſhould be thus ſolicited; ſo I hope aſſuredly, that my lords of the clergy have none intelligence with this interlibelling, but do altogether diſallow that their credit ſhould be thus defended. For though I obſerve in one of them many gloſſes, whereby the man would inſinuate himſelf into their favours, yet I find it to be ordinary, that many preſſing and fawning perſons do miſconjecture of the humours of men in authority, and many times, *Veneri immolant ſuem*, they ſeek to gratify them with that which they moſt diſlike: for I have great reaſon to ſatisfy myſelf touching the judgment of my lords the biſhops in this matter, by that which was written by one of them, which I mentioned before with honour. Nevertheleſs I note, there is not an indifferent hand carried towards theſe pamphlets as they deſerve; for the one ſort flieth in the dark, and the other is uttered openly; wherein I might adviſe that ſide out of a wiſe writer, who hath ſet it down, that *punitis ingeniis gliſcit auctoritas.*

And indeed we ſee it ever falleth out, that the forbidden writing is always thought to be certain ſparks of a truth that fly up into the faces of thoſe that ſeek to choak it, and tread it out; whereas a book authorized is thought to be but *temporis voces*, the language of the time. But in plain truth I do find (to mine underſtanding) theſe pamphlets as meet to be ſuppreſſed as the other. Firſt, becauſe as the former ſort doth deface the government of the church in the perſons of the biſhops and prelates, ſo the other doth lead into contempt the exerciſes of religion in the perſons of ſundry preachers; ſo as it diſgraceth an higher matter, though in the meaner perſon.

Next, I find certain indiſcreet and dangerous amplifications, as if the civil government itſelf of this ſtate had near loſt the force of her ſinews, and were ready to enter into ſome convulſion, all things being full of faction and diſorder; which is as unjuſtly acknowledged, as untruly affirmed. I know his meaning

is to enforce this irreverent and violent impugning of the government of bishops to be a suspected forerunner of a more general contempt. And I grant there is a sympathy between the estates; but no such matter in the civil policy, as deserveth so dishonourable a taxation.

To conclude this point: As it were to be wished that these writings had been abortive, and never seen the sun; so the next is, since they be come abroad, that they be censured (by all that have understanding and conscience) as the intemperate extravagancies of some light persons. Yea farther, that men beware (except they mean to adventure to deprive themselves of all sense of religion, and to pave their own hearts, and make them as the high way) how they may be conversant in them, and much more how they delight in that vein; but rather to turn their laughing into blushing, and to be ashamed, as of a short madness, that they have in matters of religion taken their disport and solace. But this, perchance, is of these faults which will be soonest acknowledged; though I perceive, nevertheless, that there want not some who seek to blanch and excuse it.

But to descend to a sincere view and consideration of the accidents and circumstances of these controversies, wherein either part deserveth blame or imputation, I find generally, in causes of church matters, that men do offend in some or all of these five points.

The first is, the giving occasion unto the controversies; and also the inconsiderate and ungrounded taking of occasion.

The next is, the extending and multiplying the controversies to a more general opposition or contradiction than appeareth at the first propounding of them, when mens judgments are least partial.

The third is, the passionate and unbrotherly practices and proceedings of both parts towards the persons each of others, for their discredit and suppression.

The fourth is, the courses holden and entertained on either side, for the drawing of their partisans to a more strait union within themselves, which ever importeth a farther distraction of the entire body.

The last is, the undue and inconvenient propounding, publishing, and debating of the controversies. In which point the most palpable error hath been already spoken of, as that, which through the strangeness and freshness of the the abuse first offereth itself to the conceits of all men.

Now concerning the occasion of the controversies, it cannot be denied, but that the imperfections in the conversation and government of those which have chief place in the church, have ever been principal causes and motives of schisms and divisions. For whilst the bishops and governors of the church continue full of knowledge and good works; whilst they feed the flock indeed; whilst they deal with the secular states in all liberty and resolution, according to the majesty of their calling, and the precious care of souls imposed upon them, so long the church is *situated* as it were *upon an hill*; no man maketh question of it, or seeketh to depart from it: but when these virtues in the fathers and leaders of the church have lost their light, and that they wax worldly, lovers of themselves, and pleasers of men, then men begin to grope for the church as in the dark; they are in doubt whether they be the successors of the apostles, or of the Pharisees: yea, howsoever they sit in Moses' chair, yet they can never speak, *tanquam auctoritatem habentes*, as having authority, because they have lost their reputation in the consciences of men, by declining their steps from the way which they trace out to others; so as men had need continually have sounding in their ears this same *Nolite exire*, go not out; so ready are they to depart from the church upon every voice. And therefore it is truly noted by one that writeth as a natural man, that the humility of the friers did, for a great time, maintain and bear out the irreligion of bishops and prelates.

For this is the double policy of the spiritual enemy, either by counterfeit holiness of life to establish and authorise errors; or by corruption of manners to discredit and draw in question truth and things lawful. This concerneth my lords the bishops, unto whom I am witness to myself, that I stand affected

as I ought. No contradiction hath ſupplanted in me the reverence that I owe to their calling; neither hath any detraction or calumny imbaſed mine opinion of their perſons. I know ſome of them whoſe names are moſt pierced with theſe accuſations, to be men of great virtues; although the indiſpoſition of the times, and the want of correſpondence many ways is enough to fruſtrate the beſt endeavours in the edifying of the church. And for the reſt, generally, I can condemn none. I am no judge of them that belong to ſo high a maſter; neither have I *two witneſſes*. And I know it is truly ſaid of fame, that

Pariter facta, atque infecta canebat.

Their taxations ariſe not all from one coaſt; they have many and different enemies ready to invent ſlander, more ready to amplify it, and moſt ready to believe it. And *Magnes mendacii credulitas*; credulity is the adamant of lyes. But if any be, againſt whom the ſupreme biſhop hath not a few things, but many things; if any have loſt his firſt love; if any be neither hot nor cold; if any have ſtumbled too fondly at the threſhold, in ſuch ſort that he cannot ſit well, that entered ill; it is time they return whence they are fallen, and confirm the things that remain.

Great is the weight of this fault; *et eorum cauſa abhorrebant homines a ſacrificio Domini:* and for their cauſe did men abhor the adoration of God. But howſoever it be, thoſe which have ſought to deface them, and caſt contempt upon them, are not to be excuſed.

It is the precept of Solomon, that the rulers be not reproached; no, not in our thought: but that we draw our very conceit into a modeſt interpretation of their doings. The holy angel would give no ſentence of blaſphemy againſt the common ſlanderer, but ſaid, *Increpet te Dominus*, the Lord rebuke thee. The Apoſtle St. Paul, though againſt him that did pollute ſacred juſtice with tyrannous violence he did juſtly denounce the judgment of God, ſaying, *Percutiet te Dominus*, the Lord will ſtrike thee; yet in ſaying *paries dealbate*, he thought he had gone too far, and retracted it: whereupon a learned father ſaid, *ipſum quamvis inane nomen, et umbram ſacerdotis expavit.*

The antient councils and ſynods (as is noted by the eccleſiaſtical ſtory) when they deprived any biſhop, never recorded the offence; but buried it in perpetual ſilence: only Cham purchaſed his curſe by revealing his father's diſgrace; and yet a much greater fault is it to aſcend from their perſon to their calling, and draw that in queſtion. Many good fathers ſpake rigorouſly and ſeverely of the unworthineſs of biſhops; as if preſently it did forfeit, and ceaſe their office. One ſaith, *Sacerdotes nominamur, et non ſumus*, we are called prieſts, but prieſts we are not. Another ſaith, *Niſi bonum opus amplectaris, epiſcopus eſſe non potes*; except thou undertake the good work, thou canſt not be a biſhop; yet they meant nothing leſs than to move doubt of their calling or ordination.

The ſecond occaſion of controverſies, is the nature and humour of ſome men. The church never wanteth a kind of perſons which love the ſalutation of *Rabbi*, maſter; not in ceremony or compliment, but in an inward authority which they ſeek over mens minds, in drawing them to depend upon their opinions, and to ſeek knowledge at their lips. Theſe men are the true ſucceſſors of Diotrephes, the lover of pre-eminence, and not lord biſhops. Such ſpirits do light upon another ſort of natures, which do adhere to theſe men; *quorum gloria in obſequio*; ſtiff followers, and ſuch as zeal marvellouſly for thoſe whom they have choſen for their maſters. This latter ſort, for the moſt part, are men of young years, and ſuperficial underſtanding, carried away with partial reſpects of perſons, or with the enticing appearance of godly names and pretences: *Pauci res ipſas ſequuntur, plures nomina rerum, plurimi nomina magiſtrorum*; few follow the things themſelves, more the names of the things, and moſt the names of their maſters.

About theſe general affections are wreathed and interlaced accidental and private emulations and diſcontentments, all which together break forth into contentions; ſuch as either violate truth, ſobriety, or peace. Theſe generalities apply themſelves. The univerſities are the ſeat or the continent of this

diſeaſe; whence it hath been, and is derived into the reſt of the realm. There men will no longer be *e numero*, of the number. There do others ſide themſelves before they know their right hand from their left: ſo it is true which is ſaid, *tranſeunt ab ignorantia ad praejudicium*, they ſkip from ignorance to a prejudicate opinion, and never take a ſound judgment in their way. But as it is well noted, *inter juvenile judicium et ſenile praejudicium, omnis veritas corrumpitur:* through want of years, when men are not indifferent, but partial, then their judgment is weak and unripe; and when it groweth to ſtrength and ripeneſs, by that time it is foreſtalled with ſuch a number of prejudicate opinions, as it is made unprofitable: ſo as between theſe two all truth is corrupted. In the mean while, the honourable names of ſincerity, reformation, and diſcipline are put in the fore ward: ſo as contentions and evil zeals cannot be touched, except theſe holy things be thought firſt to be violated. But howſoever they ſhall infer the ſolicitation for the peace of the church to proceed from carnal ſenſe, yet I will conclude ever with the apoſtle Paul, *Cum ſit inter vos zelus et contentio, nonne carnales eſtis?* While there is amongſt you zeal and contention, are ye not carnal? And howſoever they eſteem the compounding of controverſies to ſavour of man's wiſdom and human policy, and think themſelves led by the wiſdom which is from above; yet I ſay with St. James, *Non eſt iſta ſapientia deſurſum deſcendens, ſed terrena, animalis, diabolica: ubi enim zelus et contentio, ibi inconſtantia et omne opus pravum.* Of this inconſtancy it is ſaid by a learned father, *Procedere volunt non ad perfectionem, ſed ad permutationem*; they ſeek to go forward ſtill, not to perfection, but to change.

The third occaſion of controverſies I obſerve to be an extreme and unlimited deteſtation of ſome former hereſy or corruption of the church already acknowledged and convicted. This was the cauſe that produced the hereſy of Arius, grounded eſpecially upon deteſtation of gentiliſm, leſt the chriſtians ſhould ſeem, by the aſſertion of the equal divinity of our Saviour Chriſt, to approach unto the acknowledgment of more gods than one. The deteſtation of the hereſy of Arius produced that of Sabellius; who, holding for execrable the diſſimilitude which Arius pretended in the Trinity, fled ſo far from him, as he fell upon that other extremity, to deny the diſtinction of perſons; and to ſay they were but only names of ſeveral offices and diſpenſations. Yea, moſt of the hereſies and ſchiſms of the church have ſprung up of this root; while men have made it as it were their ſcale, by which to meaſure the bounds of the moſt perfect religion; taking it by the fartheſt diſtance from the error laſt condemned. Theſe be *poſthumi haereſium filii*; hereſies that ariſe out of the aſhes of other hereſies that are extinct and amortized.

This manner of apprehenſion doth in ſome degree poſſeſs many in our times. They think it the true touchſtone to try what is good and evil, by meaſuring what is more or leſs oppoſite to the inſtitutions of the church of Rome, be it ceremony, be it policy or government; yea, be it other inſtitutions of greater weight, that is ever moſt perfect which is removed moſt degrees from that church; and that is ever polluted and blemiſhed, which participateth in any appearance with it. This is a ſubtile and dangerous conceit for men to entertain; apt to delude themſelves, more apt to delude the people, and moſt apt of all to calumniate their adverſaries. This ſurely (but that a notorious condemnation of that poſition was before our eyes) had long ſince brought us to the re-baptization of children baptized according to the pretended catholick religion: for I ſee that which is a matter of much like reaſon, which is the re-ordaining of prieſts, is a matter already reſolutely maintained. It is very meet that men beware how they be abuſed by this opinion; and that they know that it is a conſideration of much greater wiſdom and ſobriety to be well adviſed, whether in general demolition of the inſtitutions of the church of Rome, there were not (as mens actions are imperfect) ſome good purged with the bad, rather than to purge the church, as they pretend, every day anew; which is the way to make a wound in the bowels, as is already begun.

The fourth and laſt occaſion of theſe controverſies (a matter which did alſo trouble the church in former times) is the partial affectation and imitation of foreign churches. For many of our men (during the time of perſecution, and ſince) having been converſant in churches abroad, and received a great impreſſion of the form of government there ordained, have violently ſought to intrude the ſame upon our church. But I anſwer: *Conſentiamus in eo quod convenit, non in eo quod receptum eſt*; let us agree in this, that every church do that which is convenient for the ſtate of itſelf, and not in particular cuſtoms. Although their churches had received the better form, yet many times it is to be ſought, *non quod optimum, ſed e bonis quid proximum*; not that which is beſt, but of good things which is the beſt and readieſt to be had. Our church is not now to plant; it is ſettled and eſtabliſhed. It may be, in civil ſtates a republick is a better policy than a kingdom: yet, God forbid that lawful kingdoms ſhould be tied to innovate and make alterations. *Qui mala introducit, voluntatem Dei oppugnat revelatam in verbo; qui nova introducit, voluntatem Dei oppugnat revelatam in rebus*; he that bringeth in evil cuſtoms reſiſteth the will of God revealed in his word; he that bringeth in new things, reſiſteth the will of God revealed in the things themſelves. *Conſule providentiam Dei cum verbo Dei*; take counſel of the providence of God, as well as of his word. Neither yet do I admit that their form, although it were poſſible and convenient, is better than ours, if ſome abuſes were taken away. The parity and equality of miniſters is a thing of wonderful great confuſion, and ſo is an ordinary government by ſynods, which doth neceſſarily enſue upon the other.

It is hard in all cauſes, but eſpecially in religion, when voices ſhall be numbred and not weighed: *Equidem*, ſaith a wiſe father, *ut vere quod res eſt ſcribam, prorſus decrevi fugere omnem conventum epiſcoporum; nullius enim concilii bonum exitum unquam vidi; concilia enim non minuunt mala, ſed augent potius.* "To ſay "the truth, I am utterly determined never to come to any council of biſhops; for "I never yet ſaw good end of any council; for councils abate not ill things, but "rather increaſe them." Which is to be underſtood not ſo much of general councils, as of ſynods, gathered for the ordinary government of the church. As for the deprivation of biſhops, and ſuch like cauſes, this miſchief hath taught the uſe of archbiſhops, patriarchs, and primates; as the abuſe of them ſince hath taught men to miſlike them.

But it will be ſaid; Look to the fruits of the churches abroad and ours. To which I ſay, that I beſeech the Lord to multiply his bleſſings and graces upon thoſe churches an hundred fold. But yet it is not good, that we fall on the numbring of them; it may be our peace hath made us more wanton: it may be alſo (though I would be loth to derogate from the honour of thoſe churches, were it not to remove ſcandals) that their fruits are as torches in the dark, which appear greateſt afar off. I know they may have ſome ſtrict orders for the repreſſing of ſundry exceſſes: but when I conſider of the cenſures of ſome perſons, as well upon particular men as upon churches, I think on the ſaying of a Platoniſt, who ſaith, *Certe vitia iraſcibilis partis animae ſunt gradu praviora, quam concupiſcibilis, tametſi occultiora*; a matter that appeared much by the antient contentions of biſhops. God grant that we may contend with other churches, as the vine with the olive, which of us ſhall bear the beſt fruit; and not as the briar with the thiſtle, which of us is moſt unprofitable. And thus much touching the occaſions of theſe controverſies.

Now, briefly to ſet down the growth and progreſſion of the controverſies; whereby will be verified the ſaying of Solomon; that *the courſe of Contention is to be ſtopped at the firſt; being elſe as the waters, which if they gain a breach, it will hardly ever be recovered.*

It may be remembered, that on that part, which call for reformation, was firſt propounded, ſome diſlike of certain ceremonies, ſuppoſed to be ſuperſtitious; ſome complaint of dumb miniſters who poſſeſs rich benefices; and ſome invectives againſt the idle and monaſtical continuance within the univerſities, by thoſe who had livings to be reſident upon; and ſuch like abuſes. Thence they

went on to condemn the government of biſhops as an hierarchy remaining to us of the corruptions of the Roman church, and to except to ſundry inſtitutions in the church, as not ſufficiently delivered from the pollutions of former times. And laſtly, they are advanced to define of an only and perpetual form of policy in the church; which, without conſideration of poſſibility, and foreſight of peril, and perturbation of the church and ſtate, muſt be erected and planted by the magiſtrate. Here they ſtay. Others, not able to keep footing in ſo ſteep ground, deſcend farther; That the ſame muſt be entered into and accepted of the people at their peril, without the attending of the eſtabliſhment of authority. And ſo in the mean time they refuſe to communicate with us, reputing us to have no church. This has been the progreſſion of that ſide: I mean of the generality. For, I know, ſome perſons (being of the nature, not only to love extremities, but alſo to fall to them without degrees) were at the higheſt ſtrain at the firſt.

The other part, which maintaineth the preſent government of the church, hath not kept one tenour neither. Firſt, thoſe ceremonies which were pretended to be corrupt, they maintained to be things indifferent, and oppoſed the examples of the good times of the church to that challenge which was made unto them, becauſe they were uſed in the later ſuperſtitious times. Then were they alſo content mildly to acknowledge many imperfections in the church: as tares come up amongſt the corn; which yet (according to the wiſdom taught by our Saviour) were not with ſtriſe to be pulled up, leſt it might ſpoil and ſupplant the good corn, but to grow on together till the harveſt. After, they grew to a more abſolute defence and maintainance of all the orders of the church, and ſtiffly to hold, that nothing was to be innovated; partly becauſe it needed not, partly becauſe it would make a breach upon the reſt. Hence (exaſperated through contentions) they are fallen to a direct condemnation of the contrary part, as of a ſect. Yea, and ſome indiſcreet perſons have been bold in open preaching to uſe diſhonourable and derogatory ſpeech and cenſure of the churches abroad; and that ſo far, as ſome of our men (as I have heard) ordained in foreign parts have been pronounced to be no lawful miniſters. Thus we ſee the beginnings were modeſt, but the extremes are violent; ſo as there is almoſt as great a diſtance now of either ſide from itſelf, as was at the firſt of one from the other. And ſurely, though my meaning and ſcope be not (as I ſaid before) to enter into the controverſies themſelves, yet I do admoniſh the maintainers of the alone diſcipline, to weigh and conſider ſeriouſly and attentively, how near they are unto them, with whom, I know, they will not join. It is very hard to affirm, that the diſcipline, which they ſay we want, is one of the eſſential parts of the worſhip of God; and not to affirm withal, that the people themſelves, upon peril of ſalvation, without ſtaying for the magiſtrate, are to gather themſelves into it. I demand, If a civil ſtate ſhould receive the preaching of the word and baptiſm, and interdict and exclude the ſacrament of the Lord's ſupper, were not men bound upon danger of their ſouls to draw themſelves to congregations, wherein they might celebrate this myſtery, and not to content themſelves with that part of God's worſhip which the magiſtrate had authoriſed? This I ſpeak, not to draw them into the miſlike of others, but into a more deep conſideration of themſelves: *Fortaſſe non redeunt, quia ſuum progreſſum non intelligunt.*

Again, to my lords the biſhops I ſay, that it is hard for them to avoid blame (in the opinion of an indifferent perſon) in ſtanding ſo preciſely upon altering nothing: *leges, novis legibus non recreatae, aceſcunt*; laws not refreſhed with new laws, wax ſour. *Qui mala non permutat, in bonis non perſeverat*; without change of ill, a man cannot continue the good. To take away many abuſes, ſupplanteth not good orders, but eſtabliſheth them. *Moroſa moris retentio, res turbulenta eſt, aeque ac novitas*; a contentious retaining of cuſtom is a turbulent thing, as well as innovation. A good huſband is ever pruning in his vineyard or his field; not unſeaſonably indeed, not unſkilfully, but lightly; he findeth ever ſomewhat to do. We have heard of no offers of the biſhops of bills in par-

parliament; which no doubt, proceeding from them to whom it properly belongeth, would have every where received acceptation. Their own conſtitutions and orders have reformed them little. Is nothing amiſs? Can any man defend the uſe of excommunication as a baſe proceſs to lackey up and down for duties and fees; it being a precurſory judgment of the latter day?

Is there no mean to train and nurſe up miniſters (for the yield of the univerſities will not ſerve, though they were never ſo well governed) to train them, I ſay, not to preach (for that every man confidently adventureth to do) but to preach ſoundly, and to handle the Scriptures with wiſdom and judgment? I know propheſying was ſubject to great abuſe, and would be more abuſed now; becauſe heat of contentions is encreaſed: but I ſay the only reaſon of the abuſe was, becauſe there was admitted to it a popular auditory, and it was not contained within a private conference of miniſters. Other things might be ſpoken of. I pray God to inſpire the biſhops with a fervent love and care of the people; and that they may not ſo much urge things in controverſy, as things out of controverſy, which all men confeſs to be gracious and good. And thus much for the ſecond point.

Now, as to the third point, of unbrotherly proceeding on either part, it is directly contrary to my purpoſe to amplify wrongs: it is enough to note and number them; which I do alſo, to move compaſſion and remorſe on the offending ſide, and not to animate challengers and complaints on the other. And this point (as reaſon is) doth chiefly touch that ſide which can do moſt: *Injuriae potentiorum ſunt*; injuries come from them that have the upper hand.

The wrongs of them which are poſſeſſed of the government of the church towards the other, may hardly be diſſembled or excuſed: they have charged them as though they denied tribute to Cæſar, and withdrew from the civil magiſtrate the obedience which they have ever performed and taught. They have ſorted and coupled them with the *Family of love*, whoſe hereſies they have laboured to deſtroy and confute. They have been ſwift of credit to receive accuſations againſt them, from thoſe that have quarrelled with them but for ſpeaking againſt ſin and vice. Their accuſations and inquiſitions have been ſtrict, ſwearing men to blanks and generalities (not included within compaſs of matter certain, which the party which is to take the oath may comprehend) which is a thing captious and ſtrainable. Their urging of ſubſcription to their own articles, is but *laceſſere, et irritare morbos eccleſiae*, which otherwiſe would ſpend and exerciſe themſelves. *Non conſenſum quaerit ſed diſſidium, qui, quod factis praeſtatur, in verbis exigit:* He ſeeketh not unity, but diviſion, which exacteth that in words, which men are content to yield in action. And it is true, there are ſome which (as I am perſuaded) will not eaſily offend by inconformity, who notwithſtanding make ſome conſcience to ſubſcribe; for they know this note of inconſtancy and defection from that which they have long held, ſhall diſable them to do that good which otherwiſe they might do: for ſuch is the weakneſs of many, that their miniſtry ſhould be thereby diſcredited. As for their eaſy ſilencing of them, in ſuch great ſcarcity of preachers, it is to puniſh the people, and not them. Ought they not (I mean the biſhops) to keep one eye open, to look upon the good that thoſe men do, not to fix them both upon the hurt that they ſuppoſe cometh by them? Indeed, ſuch as are intemperate and incorrigible, God forbid they ſhould be permitted to preach: but ſhall every inconſiderate word, ſometimes captiouſly watched, and for the moſt part hardly enforced, be as a forfeiture of their voice and gift in preaching? As for ſundry particular moleſtations, I take no pleaſure to recite them. If a miniſter ſhall be troubled for ſaying in baptiſm, *do you believe?* for *doſt thou believe?* If another ſhall be called in queſtion for praying for her majeſty, without the additions of her ſtyle; whereas the very form of prayer in the book of common-prayer hath "thy ſervant Elizabeth," and no more: If a third ſhall be accuſed, upon theſe words uttered touching the controverſies, *tollatur lex, et fiat certamen* (whereby was meant, that the prejudice of the law removed, either reaſons ſhould be equally compared) of calling the people to ſedition and mutiny, as

if

if he had ſaid, Away with the law, and try it out with force: If theſe, and other like particulars be true, which I have but by rumour, and cannot affirm; it is to be lamented that they ſhould labour amongſt us with ſo little comfort. I know reſtrained governments are better than remiſs; and I am of his mind that ſaid, Better is it to live where nothing is lawful, than where all things are lawful. I diſlike that laws ſhould not be continued, or diſturbers be unpuniſhed: but laws are likened to the grape, that being too much preſſed yields an hard and unwholeſome wine. Of theſe things I muſt ſay; *Ira viri non operatur juſtitiam Dei*; the wrath of man worketh not the righteouſneſs of God.

As for the injuries of the other part, they be *ictus inermes*; as it were headleſs arrows; they be fiery and eager invectives, and (in ſome fond men) uncivil and irreverent behaviour towards their ſuperiors. This laſt invention alſo, which expoſeth them to deriſion and obloquy by libels, chargeth not (as I am perſuaded) the whole ſide: neither doth that other, which is yet more odious, practiſed by the worſt ſort of them; which is, to call in (as it were to their aids) certain mercenary bands, which impugn biſhops, and other eccleſiaſtical dignities, to have the ſpoil of their endowments and livings: of theſe I cannot ſpeak too hardly. It is an intelligence between incendiaries and robbers, the one to fire the houſe, the other to rifle it.

The fourth point wholly pertaineth to them which impugn the preſent eccleſiaſtical government; who although they have not cut themſelves off from the body and communion of the church, yet do they affect certain cognizances and differences, wherein they ſeek to correſpond amongſt themſelves, and to be ſeparate from others. And it is truly ſaid, *tam ſunt mores quidam ſchiſmatici, quam dogmata ſchiſmatica*; there be as well ſchiſmatical faſhions as opinions. Firſt, they have impropriated unto themſelves the names of zealous, ſincere, and reformed; as if all others were cold minglers of holy things and prophane, and friends of abuſes. Yea, be a man endued with great virtues, and fruitful in good works; yet if he concur not with them, they term him (in derogation) a civil and moral man, and compare him to Socrates, or ſome heathen philoſopher: whereas the wiſdom of the Scriptures teacheth us otherwiſe; namely, to judge and denominate men religious according to their works of the ſecond table; becauſe they of the firſt are often counterfeit, and practiſed in hypocriſy. So St. John ſaith, that *a man doth vainly boaſt of loving God whom he never ſaw, if he love not his brother whom he hath ſeen.* And St. James ſaith, *This is true religion, to viſit the fatherleſs and the widow.* So as that which is with them but philoſophical and moral, is, in the apoſtle's phraſe, *true religion and chriſtianity.* As in affection they challenge the ſaid virtues of zeal and the reſt; ſo in knowledge they attribute unto themſelves light and perfection. They ſay, the church of England in king Edward's time, and in the beginning of her majeſty's reign, was but in the cradle; and the biſhops in thoſe times did ſomewhat grope for day-break, but that maturity and fulneſs of light proceedeth from themſelves. So Sabinius, biſhop of Heraclea, a Macedonian heretick, ſaid, that the fathers in the council of Nice were but infants and ignorant men: that the church was not ſo perfect in their decrees as to refuſe that farther ripeneſs of knowledge which time had revealed. And as they cenſure virtuous men by the names of civil and moral, ſo do they cenſure men truly and godly wiſe (who ſee into the vanity of their affections) by the name of politicks; ſaying, that their wiſdom is but carnal and ſavouring of man's brain. So likewiſe if a preacher preach with care and meditation (I ſpeak not of the vain ſcholaſtical manner of preaching, but ſoundly indeed, ordering the matter he handleth diſtinctly for memory, deducting and drawing it down for direction, and authorizing it with ſtrong proofs and warrants) they cenſure it as a form of ſpeaking not becoming the ſimplicity of the goſpel, and refer it to the reprehenſion of St. Paul, ſpeaking of the *enticing ſpeech of man's wiſdom.*

Now for their own manner of preaching, what is it? Surely they exhort well, and work compunction of mind, and bring men well to the queſtion, *Viri, fratres, quid faciemus?* But that is not enough, except they reſolve the queſtion.

They handle matters of controverſy weakly, and *obiter*, and as before a people that will accept of any thing. In doctrine of manners there is little but generality and repetition. The word (the bread of life) they toſs up and down, they break it not: they draw not their directions down *ad caſus conſcientiae*; that a man may be warranted in his particular actions whether they be lawful or not; neither indeed are many of them able to do it, what through want of grounded knowledge, what through want of ſtudy and time. It is a compendious and eaſy thing to call for the obſervation of the ſabbath-day, or to ſpeak againſt unlawful gain; but what actions and works may be done upon the ſabbath, and what not; and what courſes of gain are lawful, and in what caſes: to ſet this down, and to clear the whole matter with good diſtinctions and deciſions, is a matter of great knowledge and labour, and aſketh much meditation and converſing in the Scriptures, and other helps which God hath provided and preſerved for inſtruction.

Again, they carry not an equal hand in teaching the people their lawful liberty, as well as their reſtraints and prohibitions: but they think a man cannot go too far in that that hath a ſhew of a commandment.

They forget that there are ſins on the right hand, as well as on the left; and that the word is double-edged, and cutteth on both ſides, as well the profane tranſgreſſions, as the ſuperſtitious obſervances. Who doubteth but that it is as unlawful to ſhut where God hath opened, as to open where God hath ſhut; to bind where God hath looſed, as to looſe where God hath bound? Amongſt men it is commonly as ill taken to turn back favours, as to diſobey commandments. In this kind of zeal (for example) they have pronounced generally, and without difference, all untruths unlawful; notwithſtanding, that the midwives are directly reported to have been bleſſed for their excuſe; and Rahab is ſaid by faith to have concealed the ſpies; and Solomon's ſelected judgment proceeded upon a ſimulation; and our Saviour, the more to touch the hearts of the two diſciples with an holy dalliance, made as if he would have paſſed Emmaus. Farther, I have heard ſome ſermons of mortification, which, I think, with very good meaning, they have preached out of their own experience and exerciſe, and things in private counſels not unmeet; but ſurely no ſound conceits, much like to Parſons *Reſolution*, or not ſo good; apt to breed in men rather weak opinions and perplexed deſpairs, than filial and true repentance which is ſought.

Another point of great inconvenience and peril, is to entitle the people to hear controverſies, and all kinds of doctrine. They ſay no part of the counſel of God is to be ſuppreſſed, nor the people defrauded: ſo as the difference which the Apoſtle maketh between milk and ſtrong meat is confounded; and his precept, that the weak be not admitted unto queſtions and controverſies, taketh no place.

But moſt of all is to be ſuſpected, as a ſeed of farther inconvenience, their manner of handling the Scriptures; for whilſt they ſeek expreſs Scripture for every thing; and that they have, in a manner, deprived themſelves and the church of a ſpecial help and ſupport, by embaſing the authority of the fathers, they reſort to naked examples, conceited inferences, and forced alluſions, ſuch as do mine into all certainty of religion.

Another extremity, is the exceſſive magnifying of that, which though it be a principal and moſt holy inſtitution, yet hath it limits, as all things elſe have. We ſee whereſoever, in a manner, they find in the Scriptures the word ſpoken of, they expound it of preaching; they have made it, in a manner, of the eſſence of the ſacrament of the Lord's ſupper, to have a ſermon precedent; they have, in a ſort, annihilated the uſe of liturgies, and forms of divine ſervice, although the houſe of God be denominated of the principal, *domus orationis*, a houſe of prayer, and not a houſe of preaching. As for the life of the good monks and hermits in the primitive church, I know, they will condemn a man as half a papiſt, if he ſhould maintain them as other than prophane, becauſe they heard no ſermons. In the mean time, what preaching is, and who may be ſaid to preach, they move no queſtion; but (as far as I ſee)

every man that preſumeth to ſpeak in chair, is accounted a preacher. But I am aſſured, that not a few that call hotly for a preaching miniſtry, deſerve to be the firſt themſelves that ſhould be expelled. All which errors and miſproceedings they do fortify and intrench by an addicted reſpect to their own opinions, and an impatience to hear contradiction or argument; yea, I know ſome of them that would think it a tempting of God, to hear or read what may be ſaid againſt them; as if there could be a *quod bonum eſt, tenete*; without an *omnia probate*, going before.

This may ſuffice to offer unto themſelves a thought and conſideration, whether in theſe things they do well or no? and to correct and aſſuage the partiality of their followers. For as for any man that ſhall hereby enter into a contempt of their miniſtry, it is but his own hardneſs of heart. I know the work of exhortation doth chiefly reſt upon theſe men, and they have zeal and hate of ſin: But again, let them take heed that it be not true which one of their adverſaries ſaid, that they have but two ſmall wants, knowledge, and love. And ſo I conclude this point.

The laſt point, touching the due publiſhing and debating of theſe controverſies, needeth no long ſpeech. This ſtrange abuſe of antiques and paſquils hath been touched before: ſo likewiſe I repeat that which I ſaid, that a character of love is more proper for debates of this nature, than that of zeal. As for all direct or indirect glances or levels at mens perſons, they were ever in theſe cauſes diſallowed.

Laſtly, whatſoever be pretended, the people is no meet arbitrator, but rather the quiet, modeſt, and private aſſemblies, and conferences of the learned. *Qui apud incapacem loquitur, non diſceptat, ſed calumniatur.* The preſs and pulpit would be freed and diſcharged of theſe contentions; neither promotion on the one ſide, nor glory and heat on the other ſide, ought to continue thoſe challenges and cartels at the croſs, and other places: but rather all preachers, eſpecially ſuch as be of good temper, and have wiſdom with conſcience, ought to inculcate and beat upon a peace, ſilence, and ſurſeance. Neither let them fear Solon's law, which compelled in factions every particular perſon to range himſelf on the one ſide; nor yet the fond calumny of neutrality; but let them know that is true which is ſaid by a wiſe man, That neuters in contentions are either better or worſe than either ſide.

Theſe things have I in all ſincerity and ſimplicity ſet down, touching the controverſies which now trouble the church of England; and that without all art and inſinuation, and therefore not like to be grateful to either part: Notwithſtanding, I truſt what hath been ſaid ſhall find a correſpondence in their minds which are not imbarked in partiality, and which love the whole better than a part; wherefore I am not out of hope that it may do good; at the leaſt I ſhall not repent myſelf of the meditation.

CERTAIN

CONSIDERATIONS

Touching the better

PACIFICATION and EDIFICATION

OF THE

CHURCH of ENGLAND.

Dedicated to his Moſt Excellent MAJESTY.

THE unity of your church (excellent Sovereign) is a thing no leſs precious than the union of your kingdoms; being both works wherein your happineſs may contend with your worthineſs. Having therefore preſumed, not without your Majeſty's gracious acceptation, to ſay ſomewhat of the one; I am the more encouraged not to be ſilent in the other: the rather, becauſe it is an argument that I have travelled in heretofore *. But Solomon commendeth a word ſpoken in ſeaſon, and as our Saviour (ſpeaking of the diſcerning of ſeaſons) ſaith, *When you ſee a cloud riſing in the weſt, you ſay it will be a ſhower:* ſo your Majeſty's riſing to this monarchy in the weſt parts of the world, doth promiſe a ſweet and fruitful ſhower of many bleſſings upon this church and commonwealth; a ſhower of that influence as the very firſt dews and drops thereof have already laid the ſtorms and winds throughout Chriſtendom; reducing the very face of Europe to a more peaceable and amiable countenance. But to the purpoſe.

* Vid. p. 375.

It is very true, that theſe eccleſiaſtical matters are things not properly appertaining to my profeſſion; which I was not ſo inconſiderate, but to object to myſelf: but finding that it is many times ſeen that a man that ſtandeth off, and ſomewhat removed from a plot of ground, doth better ſurvey it and diſcover it, than thoſe which are upon it; I thought it not impoſſible, but that I, as a looker-on, might caſt mine eyes upon ſome things which the actors themſelves (eſpecially ſome being intereſſed, ſome led and addicted, ſome declared and engaged) did not or would not ſee. And that knowing in my conſcience (whereto God beareth witneſs) that the things which I ſhall ſpeak, ſpring out of no vein of popularity, oſtentation, deſire of novelty, partiality to either ſide, diſpoſition to intermeddle, or any the like leaven; I may conceive hope that what I want in depth of judgment, may be countervailed in ſimplicity and ſincerity of affection. But of all things this did moſt animate me; that I found in theſe opinions of mine (which I have long held and embraced, as may appear by that which I have many years ſince written of them, according to the proportion nevertheleſs of my weakneſs) a conſent and conformity with that which your Majeſty hath publiſhed of your own moſt chriſtian, moſt wiſe, and moderate ſenſe, in theſe cauſes; wherein you have well expreſſed to the world, that there is infuſed in your ſacred breaſt, from God, that high principle, and poſition of government, That you ever hold the whole more dear than any part.

For who ſeeth not that many are affected, and give opinion in theſe matters, as if they had not ſo much a deſire to purge the evil from the good, as to countenance and protect the evil by the good? Others ſpeak as if their ſcope were

only to ſet forth what is good, and not to ſeek what is poſſible; which is to wiſh, and not to propound. Others proceed as if they had rather a mind of removing than of reforming. But howſoever either ſide, as men (though excellent men) ſhall run into extremities; yet your Majeſty, as a moſt wiſe, equal, and chriſtian moderator, is diſpoſed to find out the golden mediocrity in the eſtabliſhment of that which is ſound, and in the reparation of that which is corrupt and decayed. To your princely judgment then I do in all humbleneſs ſubmit whatſoever I ſhall propound, offering the ſame but as a mite, into the treaſury of your wiſdom. For as the aſtronomers do well obſerve, that when three of the ſuperior lights do meet in conjunction, it bringeth forth ſome admirable effects: ſo there being joined in your Majeſty the light of nature, the light of learning, and, above all, the light of God's Holy Spirit; it cannot be but your government muſt be as a happy conſtellation over the ſtates of your kingdoms. Neither is there wanting to your Majeſty that fourth light, which, though it be but a borrowed light, yet is of ſingular efficacy and moment added to the reſt, which is the light of a moſt wiſe and well compounded council; to whoſe honourable and grave wiſdoms I do likewiſe ſubmit whatſoever I ſhall ſpeak, hoping that I ſhall not need to make proteſtation of my mind and opinion, That, until your Majeſty doth otherwiſe determine and order, all actual and full obedience is to be given to eccleſiaſtical juriſdiction as it now ſtandeth; and, when your Majeſty hath determined and ordered, that every good ſubject ought to reſt ſatisfied, and apply his obedience to your Majeſty's laws, ordinances, and royal commandments; nor of the diſlike I have of all immodeſt bitterneſs, peremptory preſumption, popular handling, and other courſes, tending rather to rumour and impreſſion in the vulgar ſort, than to likelihood of effect, joined with obſervation of duty.

But before I enter into the points controverted, I think good to remove (if it may be) two opinions, which directly confront and oppone to reformation: the one bringing it to a nullity, and the other to an impoſſibility. The firſt is, that it is againſt good policy to innovate any thing in church matters: the other, that all reformation muſt be after one platform.

For the firſt of theſe, it is excellently ſaid by the prophet; *State ſuper vias antiquas, et videte, quaenam ſit via recta et vera, et ambulate in ea.* So as he doth not ſay, *State ſuper vias antiquas, et ambulate in eis:* For it is true, that with all wiſe and moderate perſons, cuſtom and uſage obtaineth that reverence, as it is ſufficient matter to move them to make a ſtand, and to diſcover, and take a view; but it is no warrant to guide and conduct them: a juſt ground, I ſay, it is of deliberation, but not of direction. But on the other ſide, who knoweth not, that time is truly compared to a ſtream, that carrieth down freſh and pure waters into that ſalt ſea of corruption which environeth all human actions? And therefore, if man ſhall not by his induſtry, virtue, and policy, as it were with the oar, row againſt the ſtream and inclination of time; all inſtitutions and ordinances, be they never ſo pure, will corrupt and degenerate. But not to handle this matter common-place like; I would only aſk, Why the civil ſtate ſhould be purged and reſtored by good and wholeſome laws, made every third or fourth year in parliament aſſembled; deviſing remedies as faſt as time breedeth miſchief; and contrariwiſe the eccleſiaſtical ſtate ſhould ſtill continue upon the dregs of time, and receive no alteration now for theſe five and forty years and more? If any man ſhall object, that if the like intermiſſion had been uſed in civil cauſes alſo, the error had not been great: Surely the wiſdom of the kingdom hath been otherwiſe in experience for three hundred years ſpace at the leaſt. But if it be ſaid to me, that there is a difference between civil cauſes and eccleſiaſtical, they may as well tell me that churches and chapels need no reparations, though caſtles and houſes do: whereas commonly, to ſpeak truth, dilapidations of the inward and ſpiritual edifications of the church of God are in all times as great as the outward and material. Sure I am that the very word and ſtyle of reformation uſed by our Saviour, *ab initio non fuit ſic*, was applied to church matters, and thoſe of the higheſt nature, concerning the law moral.

Nevertheleſs, he were both unthankful and unwiſe, that would deny but that the church of England, during the time of Queen Elizabeth, of famous memory,

did flouriſh. If I ſhould compare it with foreign churches, I would rather the compariſon ſhould be in the virtues, than, as ſome make it, in the defects; rather, I ſay, as between the vine and the olive, which ſhould be moſt fruitful; and not as between the briar and the thiſtle, which ſhould be moſt unprofitable. For that reverence ſhould be uſed to the church, which the good ſons of Noah uſed to their father's nakedneſs; that is, as it were to go backwards, and to help the defects thereof, and yet to diſſemble them. And it is to be acknowledged, that ſcarcely any church, ſince the primitive church, yielded, in like number of years and latitude of country, a greater number of excellent preachers, famous writers, and grave governors. But for the diſcipline and orders of the church, as many, and the chiefeſt of them, are holy and good; ſo yet, if St. John were to endite an epiſtle to the church of England, as he did to them of Aſia, it would ſure have the clauſe; *habeo adverſus te pauca.* And no more for this point, ſaving, that as an appendix thereto it is not amiſs to touch that objection, which is made to the time, and not to the matter; pretending, that if reformation were neceſſary, yet it were not now ſeaſonable at your Majeſty's firſt entrance: yet Hippocrates ſaith, *Si quid moves, a principio move:* and the wiſdom of all examples do ſhew, that the wiſeſt princes, as they have ever been the moſt ſparing in removing or alteration of ſervants and officers upon their coming in; ſo for removing of abuſes and enormities, and for reforming of laws, and the policy of their ſtates, they have chiefly ſought to ennoble and commend their beginnings therewith; knowing that the firſt impreſſion with people continueth long, and when mens minds are moſt in expectation and ſuſpence, then are they beſt wrought and managed. And therefore it ſeemeth to me, that as the ſpring of nature (I mean the ſpring of the year) is the beſt time for purging and medicining the natural body, ſo the ſpring of kingdoms is the moſt proper ſeaſon for the purging and rectifying of politick bodies.

There remaineth yet an objection, rather of ſuſpicion than of reaſon; and yet ſuch as I think maketh a great impreſſion in the minds of very wiſe and well-affected perſons; which is, that if way be given to mutation, though it be in taking away abuſes, yet it may ſo acquaint men with ſweetneſs of change, as it will undermine the ſtability even of that which is ſound and good. This ſurely had been a good and true allegation in the ancient contentions and diviſions between the people and the ſenate of Rome; where things were carried at the appetites of multitudes, which can never keep within the compaſs of any moderation: but theſe things being with us to have an orderly paſſage, under a king who hath a royal power and approved judgment, and knoweth as well the meaſure of things as the nature of them; it is ſurely a needleſs fear. For they need not doubt but your Majeſty, with the advice of your council, will diſcern what things are intermingled like the tares amongſt the wheat, which have their roots ſo enwrapped and entangled, as the one cannot be pulled up without endangering the other; and what are mingled but as the chaff and the corn, which need but a fan to ſift and ſever them. So much therefore for the firſt point, of no reformation to be admitted at all.

For the ſecond point, that there ſhould be but one form of diſcipline in all churches, and that impoſed by neceſſity of a commandment and preſcript out of the word of God; it is a matter volumes have been compiled of, and therefore cannot receive a brief redargution. I for my part do confeſs, that in revolving the Scriptures I could never find any ſuch thing: but that God had left the like liberty to the church government, as he had done to the civil government; to be varied according to time, and place, and accidents, which nevertheleſs his high and divine providence doth order and diſpoſe. For all civil governments are reſtrained from God unto the general grounds of juſtice and manners; but the policies and forms of them are left free: ſo that monarchies and kingdoms, ſenates and ſeignories, popular ſtates, and communalties, are lawful, and where they are planted ought to be maintained inviolate.

So likewiſe in church matters, the ſubſtance of doctrine is immutable; and ſo are the general rules of government: but for rites and ceremonies, and for the particular hierarchies, policies, and diſciplines of churches, they be left at

large. And therefore it is good we return unto the ancient bounds of unity in the church of God; which was, one faith, one baptiſm; and not, one hierarchy, one diſcipline: and that we obſerve the league of Chriſtians, as it is penned by our Saviour; which is in ſubſtance of doctrine this: *He that is not with us, is againſt us*: but in things indifferent, and but of circumſtance, this; *He that is not againſt us, is with us.* In theſe things, ſo as the general rules be obſerved; that Chriſt's flock be fed; that there be a ſucceſſion in biſhops and miniſters, which are the prophets of the New Teſtament; that there be a due and reverent uſe of the power of the keys; that thoſe that preach the goſpel, live of the goſpel; that all things tend to edification; that all things be done in order and with decency, and the like: the reſt is left to the holy wiſdom and ſpiritual diſcretion of the maſter builders, and inferior builders in Chriſt's church; as it is excellently alluded by that father that noted, that Chriſt's garment was without ſeam; and yet the church's garment was of divers colours: and thereupon ſetteth down for a rule; *in veſte varietas ſit, ſciſſura non ſit.*

In which variety, nevertheleſs, it is a ſafe and wiſe courſe to follow good examples and precedents; but then by the rule of imitation and example to conſider not only which are beſt, but which are the likelieſt; as namely, the government of the church in the pureſt times of the firſt good emperors that embraced the faith. For the times of perſecution, before temporal princes received our faith, as they were excellent times for doctrine and manners, ſo they be improper and unlike examples of outward government and policy. And ſo much for this point: now to the particular points of controverſies, or rather of reformation.

Circumſtances in the government of Biſhops.

FIRST therefore, for the government of biſhops, I for my part, not prejudging the precedents of other reformed churches, do hold it warranted by the word of God, and by the practice of the ancient church in the better times, and much more convenient for kingdoms, than parity of miniſters and government by ſynods. But then farther, it is to be conſidered, that the church is not now to plant or build; but only to be pruned from corruption, and to be repaired and reſtored in ſome decays.

For it is worth the noting, that the Scripture ſaith, *Tranſlato ſacerdotio, neceſſe eſt ut et legis fiat tranſlatio.* It is not poſſible, in reſpect of the great and near ſympathy between the ſtate civil, and the ſtate eccleſiaſtical, to make ſo main an alteration in the church, but it would have a perilous operation upon the kingdoms; and therefore it is fit that controverſy be in peace and ſilence.

But there be two circumſtances in the adminiſtration of biſhops, wherein, I confeſs, I could never be ſatisfied; the one, the ſole exerciſe of their authority; the other, the deputation of their authority.

For the firſt, the biſhop giveth orders alone, excommunicateth alone, judgeth alone. This ſeemeth to be a thing almoſt without example in good government, and therefore not unlikely to have crept in in the degenerate and corrupt times. We ſee the greateſt kings and monarchs have their councils. There is no temporal court in England of the higher ſort where the authority doth reſt in one perſon. The king's bench, common-pleas, and the exchequer, are benches of a certain number of judges. The chancellor of England hath an aſſiſtance of twelve maſters of the chancery. The maſter of the wards hath a council of the court: ſo hath the chancellor of the dutchy. In the exchequer chamber, the lord treaſurer is joined with the chancellor and the barons. The maſters of the requeſts are ever more than one. The juſtices of aſſize are two. The lord preſidents in the North and in Wales have councils of divers. The ſtar-chamber is an aſſembly of the king's privy council, aſperſed with the lords ſpiritual and temporal: ſo as in courts the principal perſon hath ever either collegues or aſſeſſors.

The like is to be found in other well-governed common-wealths abroad, where the juriſdiction is yet more diſperſed; as in the court of parliament of France,

France, and in other places. No man will deny but the acts that paſs the biſhop's juriſdiction are of as great importance as thoſe that paſs the civil courts: for mens ſouls are more precious than their bodies or goods; and ſo are their good names. Biſhops have their infirmities, and have no exception from that general malediction which is pronounced againſt all men living, *Vae ſoli, nam ſi occideret, etc.* Nay, we ſee that the firſt warrant in ſpiritual cauſes is directed to a number, *Dic eccleſiae*; which is not ſo in temporal matters: and we ſee that in general cauſes of church government, there are as well aſſemblies of all the clergy in councils, as of all the ſtates in parliament. Whence ſhould this ſole exerciſe of juriſdiction come? Surely I do ſuppoſe, and, I think, upon good ground, that *ab initio non fuit ita*; and that the deans and chapters were councils about the ſees and chairs of biſhops at the firſt, and were unto them a preſbytery or conſiſtory; and intermeddled not only in the diſpoſing of their revenues and endowments; but much more in juriſdiction eccleſiaſtical. But it is probable, that the deans and chapters ſtuck cloſe to the biſhops in matters of profit and the world, and would not loſe their hold; but in matters of juriſdiction (which they accounted but trouble and attendance) they ſuffered the biſhops to encroach and uſurp; and ſo the one continueth, and the other is loſt. And we ſee that the biſhop of Rome *(fas enim et ab hoſte doceri*, and no queſtion in that church the firſt inſtitutions were excellent) performeth all eccleſiaſtical juriſdiction as in conſiſtory.

And whereof conſiſteth this conſiſtory, but of the pariſh-prieſts of Rome, which term themſelves cardinals, *a cardinibus mundi*; becauſe the biſhop pretendeth to be univerſal over the whole world? And hereof again we ſee many ſhadows yet remaining: as, that the dean and chapter, *pro forma*, chuſeth the biſhop, which is the higheſt point of juriſdiction: and that the biſhop, when he giveth orders, if there be any miniſters caſually preſent, calleth them to join with him in impoſition of hands, and ſome other particulars. And therefore it ſeemeth to me a thing reaſonable and religious, and according to the firſt inſtitution, that biſhops, in the greateſt cauſes, and thoſe which require a ſpiritual diſcerning, namely, in ordaining, ſuſpending, or depriving miniſters, in excommunication (being reſtored to the true and proper uſe, as ſhall be afterwards touched) in ſentencing the validity of marriages and legitimations, in judging cauſes criminous, as ſimony, inceſt, blaſphemy, and the like, ſhould not proceed ſole and unaſſiſted: which point (as I underſtand it) is a reformation that may be planted *ſine ſtrepitu*, without any perturbation at all: and is a matter which will give ſtrength to the biſhops, countenance to the inferior degrees of prelates or miniſters, and the better iſſue or proceeding to thoſe cauſes that ſhall paſs.

And as I wiſh this ſtrength given to the biſhops by council, ſo it is not unworthy your Majeſty's conſideration, whether you ſhall not think fit to give ſtrength to the general council of your clergy (the convocation-houſe) which was then reſtrained when the ſtate of the clergy was thought a ſuſpected part to the kingdom, in regard of their late homage to the biſhop of Rome; which ſtate now will give place to none in their loyalty and devotion to your Majeſty.

For the ſecond point, which is the deputation of their authority, I ſee no perfect and ſure ground for that neither, being ſomewhat different from the examples and rules of government. The biſhop exerciſeth his juriſdiction by his chancellor and commiſſary official, *etc.* We ſee in all laws in the world, offices of confidence and ſkill cannot be put over, nor exerciſed by deputy, except it be eſpecially contained in the original grant; and in that caſe it is dutiful. And for experience, there was never any chancellor of England made a deputy; there was never any judge in any court made a deputy. The biſhop is a judge and of a high nature; whence cometh it that he ſhould depute, conſidering that all truſt and confidence, as was ſaid, is perſonal and inherent; and cannot, nor ought not to be tranſpoſed? Surely in this, again, *ab initio non fuit ſic:* but it is probable that biſhops when they gave themſelves too much to the glory of the world, and became grandees in kingdoms, and great counſellors to princes, then did they delegate their proper juriſdictions, as things of too inferior a nature for their greatneſs: and then, after the ſimili-

tude and imitation of kings and counts palatine, they would have their chancellors and judges.

But that example of kings and potentates giveth no good defence. For the reaſons why kings adminiſter by their judges, although themſelves are ſupreme judges, are two: the one, becauſe the offices of kings are for the moſt part of inheritance; and it is a rule in all laws, that offices of inheritance are rather matters that ground in intereſt than in confidence: for as much as they may fall upon women, upon infants, upon lunaticks and ideots, perſons incapable to execute judicature in perſon; and therefore ſuch offices by all laws might ever be exerciſed and adminiſtred by delegation. The ſecond reaſon is, becauſe of the amplitude of their juriſdictions; which is as great as either their birth-right from their anceſtors, or their ſword-right from God maketh it. And therefore, if Moſes, that was governor over no great people, and thoſe collected together in a camp, and not ſcattered in provinces and cities, himſelf of an extraordinary ſpirit, was nevertheleſs not able to ſuffice and hold out in perſon to judge the people, but did, by the advice of Jethro approved from God, ſubſtitute elders and judges; how much more other kings and princes?

There is a third reaſon likewiſe, though not much to the preſent purpoſe; and that is, that kings, either in reſpect of the commonwealth, or of the greatneſs of their own patrimonies, are uſually parties in ſuits; and then their judges ſtand indifferent between them and the ſubject: but in the caſe of biſhops, none of theſe reaſons hold. For, firſt, their office is elective, and for life, and not patrimonial or hereditary; an office merely of confidence, ſcience, and qualification. And for the ſecond reaſon, it is true, that their juriſdiction is ample and ſpacious; and that their time is to be divided between the labours as well in the word and doctrine, as in government and juriſdiction: but yet I do not ſee (ſuppoſing the biſhops courts to be uſed incorruptly, and without any indirect courſe held to multiply cauſes for gain of fees) but that the biſhop might very well, for cauſes of moment, ſupply his judicial function in his own perſon. For we ſee before our eyes, that one chancellor of England diſpatcheth the ſuits in equity of the whole kingdom; which is not ſo much by reaſon of the excellency of that rare honourable perſon which now holdeth the place: but it was ever ſo, though more or leſs burdenous to the ſuitor, as the chancellor was more or leſs able to give diſpatch. And if hold be taken of that which was ſaid before, that the biſhop's labour in the word muſt take up a principal part of his time; ſo I may ſay again, that matters of ſtate have ever taken up moſt of the chancellor's time; having been for the moſt part perſons upon whom the kings of this realm have moſt relied for matters of counſel. And therefore there is no doubt but the biſhop, whoſe circuit is leſs ample, and the cauſes in nature not ſo multiplying, with the help of references and certificates to and from fit perſons, for the better ripening of cauſes in their mean proceedings, and ſuch ordinary helps incident to juriſdiction, may very well ſuffice his office. But yet there is another help: for the cauſes that come before him are theſe: tythes, legacies, adminiſtrations, and other teſtamentary cauſes; cauſes matrimonial; accuſations againſt miniſters, tending to their ſuſpenſion, deprivation, or degrading; ſimony, incontinency, hereſy, blaſphemy, breach of the ſabbath, and other like cauſes of ſcandal. The firſt two of theſe, in my opinion, differ from the reſt; that is, tythes and teſtaments: for thoſe be matters of profit, and in their nature temporal; though, by a favour and connivance of the temporal juriſdiction, they have been allowed and permitted to the courts eccleſiaſtical: the one, to the end the clergy might ſue for that that was their ſuſtentation before their own judges; and the other, in a kind of piety and religion, which was thought incident to the performance of dead mens wills. And ſurely for theſe two the biſhop, in my opinion, may with leſs danger diſcharge himſelf upon his ordinary judges. And I think likewiſe it will fall out, that thoſe ſuits are in the greateſt number. But for the reſt, which require a ſpiritual ſcience and diſcretion, in reſpect of their nature, or of the ſcandal, it were reaſon, in my opinion, there were no audience given but by the biſhop himſelf; he being alſo aſſiſted, as was touched before: but it were neceſſary alſo he were

attended by his chancellor, or ſome others his officers being learned in the civil laws, for his better inſtruction in points of formality, or the courſes of the court: which if it were done, then were there leſs uſe of the official's court, whereof there is now ſo much complaint: and cauſes of the nature aforeſaid being only drawn to the audience of the biſhop, it would repreſs frivolous and prowling ſuits, and give a grave and incorrupt proceeding to ſuch cauſes as ſhall be fit for the court.

There is a third point alſo, not of juriſdiction, but of form of proceeding, which may deſerve reformation, the rather, becauſe it is contrary to the laws and cuſtoms of this land and ſtate, which though they do not rule thoſe proceedings, yet may they be adviſed with for better directions; and that is the oath *ex officio*; whereby men are enforced to accuſe themſelves, and, that that is more, are ſworn unto blanks, and not unto accuſations and charges declared. By the law of England no man is bound to accuſe himſelf. In the higheſt caſes of treaſon, torture is uſed for diſcovery, and not for evidence. In capital matters, no delinquent's anſwer upon oath is required; no, not permitted. In criminal matters not capital, handled in the ſtar-chamber, and in cauſes of conſcience handled in the chancery, for the moſt part grounded upon truſt and ſecreſy, the oath of the party is required. But how? Where there is an accuſation and an accuſer, which we call bills of complaint (from which the complainant cannot vary, and out of the compaſs of the which the defendant may not be examined) exhibited unto the court, and by proceſs notified unto the defendant. But to examine a man upon oath, out of the inſinuation of fame, or out of accuſations ſecret and undeclared, though it have ſome countenance from the civil law, yet it is ſo oppoſite *ex diametro* to the ſenſe and courſe of the common law, as it may well receive ſome limitation.

Concerning the Liturgy, the Ceremonies, and Subſcription.

FOR the liturgy, great reſpect and heed would be taken, leſt by inveighing againſt the dumb miniſtry, due reverence be not withdrawn from the liturgy. For though the gift of preaching be far above that of reading; yet the action of the liturgy is as high and holy as that of the ſermon. It is ſaid, *Domus mea domus orationis vocabitur: the houſe of prayer*; not the houſe of preaching: and whereas the apoſtle ſaith, *How ſhall men call upon him, on whom they have not believed? And how ſhall they believe unleſs they hear? And how ſhall they hear, without a preacher?* it appeareth that as preaching is the more original, ſo prayer is the more final; as the difference is between the ſeed and the fruit: for the keeping of God's law, is the fruit of the teaching of the law; and prayer, or invocation, or divine ſervice, or liturgy (for theſe be but varieties of terms) is the immediate hallowing of the name of God, and the principal work of the firſt table, and of the great commandment of the love of God. It is true that the preaching of the holy word of God is the ſowing of the ſeed; it is the lifting up of the brazen ſerpent, the miniſtry of faith, and the ordinary means of ſalvation; but yet it is good to take example, how that the beſt actions of the worſhip of God may be extolled exceſſively and ſuperſtitiouſly. As the extolling of the ſacrament bred the ſuperſtition of the maſs; the extolling of the liturgy and prayers bred the ſuperſtition of the monaſtical orders and oraiſons: and ſo no doubt preaching likewiſe may be magnified and extolled ſuperſtitiouſly, as if all the whole body of God's worſhip ſhould be turned into an ear. So as none (as I ſuppoſe) of ſound judgment will derogate from the liturgy, if the form thereof be in all parts agreeable to the word of God, the example of the primitive church, and that holy decency which St. Paul commendeth. And therefore, firſt, that there be a ſet form of prayer, and that it be not left either to an extemporal form, or to an arbitrary form. Secondly, that it conſiſt as well of lauds, hymns, and thankſgivings, as of petitions, prayers, and ſupplications. Thirdly, that the form thereof be quickned with ſome ſhortneſs and diverſities of prayers

and hymns, and with ſome interchanges of the voice of the people, as well as of the miniſter. Fourthly, that it admit ſome diſtinctions of times, and commemorations of God's principal benefits, as well general as particular. Fifthly, that prayers likewiſe be appropriated to ſeveral neceſſities and occaſions of the church. Sixthly, that there be a form likewiſe of words and liturgy in the adminiſtration of the ſacraments, and in the denouncing of the cenſures of the church, and other holy actions and ſolemnities: theſe things, I think, will not be much controverted.

But for the particular exceptions to the liturgy in form as it now ſtandeth, I think divers of them allowing they were juſt, yet ſeem they not to be weighty; otherwiſe than that nothing ought to be counted light in matters of religion and piety: as the heathen himſelf could ſay, *etiam vultu ſaepe laeditur pietas.* That the word (prieſt) ſhould not be continued, eſpecially with offence, the word (miniſter) being already made familiar. This may be ſaid that it is a good rule in tranſlation, never to confound that in one word in the tranſlation, which is preciſely diſtinguiſhed in two words in the original, for doubt of equivocation and traducing. And therefore ſeeing the word πρεσβύτερος and ἱερεὺς be always diſtinguiſhed in the original; and the one uſed for a ſacrificer, the other for a miniſter; the word (prieſt) being made common to both (whatſoever the derivation be) yet in uſe it confoundeth the miniſter with the ſacrificer. And for an example of this kind, I did ever allow the diſcretion and tenderneſs of the Rhemiſh tranſlation in this point; that finding in the original the word ἀγάπη and never ἔρως, do ever tranſlate charity, and never love, becauſe of the indifferency and equivocation of the word with impure love.

Touching the abſolution; it is not unworthy conſideration, whether it may not be thought improper and unneceſſary: for there are but two ſorts of abſolution; both ſuppoſing an obligation precedent: the one upon an excommunication, which is religious and primitive; the other upon confeſſion and penance, which is ſuperſtitious, or at leaſt poſitive; and both particular, neither general. Therefore ſince the one is taken away, and the other hath its proper caſe, what doth a general abſolution, wherein there is neither penance nor excommunication precedent? for the church never looſeth, but where the church hath bound. And ſurely I may think this at the firſt was allowed in a kind of ſpiritual diſcretion, becauſe the church thought the people could not be ſuddenly weaned from their conceit of aſſoyling, to which they had been ſo long accuſtomed.

For confirmation, to my underſtanding, the ſtate of the queſtion is, whether it be not a matter miſtaken and altered by time; and whether that be not now made a ſubſequent to baptiſm, which was indeed an inducement to the communion. For whereas in the primitive church children were examined of their faith before they were admitted to the communion, time may ſeem to have turned it to refer as if it had been to receive a confirmation of their baptiſm.

For private baptiſm by women, or lay-perſons, the beſt divines do utterly condemn it; and I hear it not generally defended; and I have often marveled, that where the book in the preface to publick baptiſm doth acknowledge that baptiſm in the practice of the primitive church was anniverſary, and but at certain times; which ſheweth that the primitive church did not attribute ſo much to the ceremony, as they would break an outward and general order for it; the book ſhould afterwards allow of private baptiſm, as if the ceremony were of that neceſſity, as the very inſtitution, which committed baptiſm only to the miniſters, ſhould be broken in regard of the ſuppoſed neceſſity. And therefore this point of all others I think was but a *Conceſſum propter duritiem cordis.*

For the form of celebrating matrimony, the ring ſeemeth to many even of vulgar ſenſe and underſtanding, a ceremony not grave, eſpecially to be made (as the words make it) the eſſential part of the action; beſides, ſome other of the words are noted in ſpeech to be not ſo decent and fit.

For muſick in churches; that there ſhould be ſinging of pſalms and ſpiritual ſongs, is not denied: ſo the queſtion is *de modo* wherein if a man will look atten-

attentively into the order and obſervation of it, it is eaſy to diſcern between the wiſdom of the inſtitution, and the exceſs of the late times. For firſt there are no ſongs or verſes ſung by the quire, which are not ſuppoſed by continual uſe to be ſo familiar with the people, as they have them without book; whereby the ſound hurteth not the underſtanding; and thoſe which cannot read upon the book, are yet partakers of the ſenſe, and may follow it with their mind. So again, after the reading of the word, it was thought fit there ſhould be ſome pauſe for holy meditation, before they proceeded to the reſt of the ſervice: which pauſe was thought fit to be filled rather with ſome grave ſound, than with a ſtill ſilence; which was the reaſon of the playing upon the organs after the Scriptures read; all which was decent and tending to edification. But then the curioſity of diviſion and reports, and other figures of muſick, have no affinity with the reaſonable ſervice of God, but were added in the more pompous times.

For the cap and ſurplice, ſince they be things in their nature indifferent, and yet by ſome held ſuperſtitious; and that the queſtion is between ſcience and conſcience, it ſeemeth to fall within the compaſs of the apoſtle's rule, which is, *that the ſtronger do deſcend and yield to the weaker.* Only the difference is, that it will be materially ſaid, that the rule holdeth between private man, and private man; but not between the conſcience of a private man, and the order of a church. But yet ſince the queſtion at this time is of a toleration, not by connivance, which may encourage diſobedience, but by law, which may give a liberty; it is good again to be adviſed whether it fall not within the equity of the former rule: the rather, becauſe the ſilencing of miniſters by this occaſion, is, in this ſcarcity of good preachers, a puniſhment that lighteth upon the people as well as upon the party. And for the ſubſcription, it ſeemeth to me in the nature of a confeſſion, and therefore more proper to bind in the unity of faith, and to be urged rather for articles of doctrine, than for rites and ceremonies, and points of outward government. For howſoever politick conſiderations and reaſons of ſtate may require uniformity, yet chriſtian and divine grounds look chiefly upon unity.

Touching a Preaching Miniſtry.

TO ſpeak of a learned miniſtry: it is true that the worthineſs of the paſtors and miniſters is of all other points of religion the moſt ſummary; I do not ſay the greateſt, but the moſt effectual towards the reſt: but herein, to my underſtanding, while men go on in zeal to haſten this work, they are not aware of as great or greater inconvenience, than that which they ſeek to remove. For while they inveigh againſt a dumb miniſtry, they make too eaſy and too promiſcuous an allowance of ſuch as they account preachers; having not reſpect enough to their learnings in other arts, which are handmaids to divinity; not reſpect enough to years, except it be in caſe of extraordinary gift; not reſpect enough to the gift itſelf, which many times is none at all. For God forbid, that every man that can take unto himſelf boldneſs to ſpeak an hour together in a church upon a text, ſhould be admitted for a preacher, though he mean never ſo well. I know there is a great latitude in gifts, and a great variety in auditories and congregations; but yet ſo as there is *aliquid infimum*, below which you ought not to deſcend. For you muſt rather leave the ark to ſhake as it ſhall pleaſe God, than put unworthy hands to hold it up. And when we are in God's temple, we are warned rather to *put our hands upon our mouth, than to offer the ſacrifice of fools.* And ſurely it may be juſtly thought, that amongſt many cauſes of atheiſm, which are miſerably met in our age; as ſchiſms and controverſies, profane ſcoffings in holy matters, and others; it is not the leaſt that divers do adventure to handle the word of God, which are unfit and unworthy. And herein I would have no man miſtake me, as if I did extol curious and affected preaching; which is as much on the other ſide to be diſliked, and breedeth atheiſm and ſcandal as well as the other (for who would not be offended at one that cometh into the pulpit, as if he came upon the ſtage

to play parts or prizes?) neither on the other ſide, as if I would diſcourage any who hath any tolerable gift.

But upon this point I ground three conſiderations: Firſt, whether it were not requiſite to renew that good exerciſe which was practiſed in this church, ſome years, and afterwards put down by order indeed from the church, in regard of ſome abuſe thereof, inconvenient for thoſe times; and yet againſt the advice and opinion of one of the greateſt and graveſt prelates of this land, and was commonly called propheſying; which was this: That the miniſters within a precinct did meet upon a week-day in ſome principal town, where there was ſome ancient grave miniſter, that was preſident, and an auditory admitted of gentlemen, or other perſons of leiſure. Then every miniſter ſucceſſively, beginning with the youngeſt, did handle one and the ſame part of Scripture, ſpending ſeverally ſome quarter of an hour or better, and in the whole ſome two hours: and ſo the exerciſe being begun and concluded with prayer, and the preſident giving a text for the next meeting, the aſſembly was diſſolved. And this was, as I take it, a fortnight's exerciſe; which, in my opinion, was the beſt way to frame and train up preachers to handle the word of God as it ought to be handled, that hath been practiſed. For we ſee orators have their declamations, lawyers have their moots, logicians their ſophiſms; and every practice of ſcience hath an exerciſe of erudition and initiation before men come to the life; only preaching, which is the worthieſt, and wherein it is moſt danger to do amiſs, wanteth an introduction, and is ventured and ruſhed upon at the firſt. But unto this exerciſe of the prophecy, I would wiſh theſe two additions: the one, that after this exerciſe, which is in ſome ſort public, there were immediately a private meeting of the ſame miniſters, where they might brotherly admoniſh the one the other, and eſpecially the elder ſort the younger, of any thing that had paſſed in the exerciſe in matter or manner unſound and uncomely; and in a word, might mutually uſe ſuch advice, inſtruction, comfort, or encouragement, as occaſion might miniſter; for publick reprehenſion were to be debarred. The other addition, that I mean, is that the ſame exerciſe were uſed in the univerſities for young divines before they preſumed to preach, as well as in the country for miniſters. For they have in ſome colleges an exerciſe called a common place; which can in no degree be ſo profitable, being but the ſpeech of one man at one time. And if it be feared, that it may be occaſion to whet mens ſpeeches for controverſies, it is eaſily remedied, by ſome ſtrict prohibition, that matters of controverſy tending any way to the violating or diſquieting the peace of the church, be not handled or entered into; which prohibition, in regard there is ever to be a grave perſon preſident or moderator, cannot be fruſtrated. The ſecond conſideration is, whether it were not convenient there ſhould be a more exact probation and examination of miniſters: namely, that the biſhops do not ordain alone, but by advice; and then that ancient holy order of the church might be revived; by the which the biſhop did ordain miniſters but at four ſet times of the year; which were called *Quatuor tempora*; which are now called Ember-weeks: it being thought fit to accompany ſo high an action with general faſting and prayer, and ſermons, and all holy exerciſes; and the names likewiſe of thoſe that were to be ordained, were publiſhed ſome days before their ordination; to the end, exceptions might be taken, if juſt cauſe were. The third conſideration is, that if the caſe of the church of England be, that were a computation taken of all the parochian churches (allowing the union of ſuch as were too ſmall and adjacent) and again a computation to be taken of the perſons who were worthy to be paſtors; and upon the ſaid account if it fall out that there are many more churches than paſtors, then of neceſſity recourſe muſt be had to one of theſe remedies; either that pluralities muſt be allowed (eſpecially if you can by permutation make the benefices more compatible;) or that there be allowed preachers to have a more general charge, to ſupply and ſerve by turn pariſhes unfurniſhed: for that ſome churches ſhould be provided of paſtors able to teach, and others wholly deſtitute, ſeemeth to me to be againſt the communion of ſaints and chriſtians, and againſt the practice of the primitive church.

Touching

Touching the abuſe of Excommunication.

EXcommunication is the greateſt judgment upon earth; being that which is ratified in heaven; and being a precurſory or preluſory judgment of the great judgment of Chriſt in the end of the world. And therefore for this to be uſed irreverently, and to be made an ordinary proceſs, to lackey up and down for fees; how can it be without derogation to God's honour, and making the power of the keys contemptible? I know very well the defence thereof, which hath no great force; that it iſſueth forth not for the thing itſelf, but for the contumacy. I do not deny, but this judgment is, as I ſaid before, of the nature of God's judgments; of the which it is a model. For as the judgment of God taketh hold of the leaſt ſin of the impenitent, and taketh no hold of the greateſt ſin of the convert or penitent; ſo excommunication may in caſe iſſue upon the ſmalleſt offence, and in caſe not iſſue upon the greateſt: but is this contumacy ſuch a contumacy as excommunication is now uſed for? For the contumacy muſt be ſuch as the party (as far as the eye and wiſdom of the church can diſcern) ſtandeth in ſtate of reprobation and damnation: as one that for that time ſeemeth given over to final impenitency. Upon this obſervation I ground two conſiderations: the one, that this cenſure be reſtored to the true dignity and uſe thereof; which is, that it proceed not but in cauſes of great weight; and that it be decreed not by any deputy or ſubſtitute of the biſhop, but by the biſhop in perſon; and not by him alone, but by the biſhop aſſiſted.

The other conſideration is, that in lieu thereof, there be given to the eccleſiaſtical court ſome ordinary proceſs with ſuch force and coertion as appertaineth; that ſo the dignity of ſo high a ſentence being retained, and the neceſſity of mean proceſs ſupplied, the church may be indeed reſtored to the ancient vigour and ſplendour. To this purpoſe, joined with ſome other holy and good purpoſes, was there a bill drawn in parliament, in the three and twentieth year of the reign of the queen deceaſed; which was the graveſt parliament that I have known; and the bill recommended by the graveſt counſellor of eſtate in parliament; though afterwards it was ſtayed by the queen's ſpecial commandment, the nature of thoſe times conſidered.

Touching Non-Reſidents, and Pluralities.

FOR non-reſidence, except it be in caſe of neceſſary abſence, it ſeemeth an abuſe drawn out of covetouſneſs and ſloth: for that men ſhould live of the flock that they do not feed, or of the altar at which they do not ſerve, is a thing that can hardly receive juſt defence; and to exerciſe the office of a paſtor, in matter of the word and doctrine, by deputies, is a thing not warranted, as hath been touched before. The queſtions upon this point do ariſe upon the caſes of exception and excuſation, which ſhall be thought reaſonable and ſufficient, and which not. For the caſe of chaplains, let me ſpeak that with your Majeſty's pardon, and with reverence towards the other peers and grave perſons, whoſe chaplains by ſtatutes are privileged: I ſhould think, that the attendance which chaplains give to your Majeſty's court, and in the houſes and families of their lords, were a juſter reaſon why they ſhould have no benefice, than why they ſhould be qualified to have two: for, as it ſtandeth with chriſtian policy, that ſuch attendance be in no wiſe neglected; becauſe that good, which enſueth thereof to the church of God, may exceed, or countervail that which may follow of their labours in any, though never ſo large a congregation; ſo it were reaſonable that their maintenance ſhould honourably and liberally proceed thence, where their labours be employed. Neither are there wanting in the church dignities and preferments not joined with any exact cure of ſouls; by which, and by the hope of which, ſuch attendants in ordinary (who ought to be, as for the moſt part they are, of the beſt gifts and ſort) may be farther encouraged and rewarded. And as for extraordinay attendants, they may very well retain

the grace and countenance of their places and duties at times incident thereunto, without diſcontinuance or non-reſidence in their paſtoral charges. Next for the caſe of intending ſtudies in the univerſities, it will more eaſily receive an anſwer; for ſtudies do but ſerve and tend to the practice of thoſe ſtudies: and therefore for that which is moſt principal and final to be left undone, for the attending of that which is ſubſervient and ſubminiſtrant, ſeemeth to be againſt proportion of reaſon. Neither do I ſee, but that they proceed right well in all knowledge, which do couple ſtudy with their practiſe; and do not firſt ſtudy altogether, and then practiſe altogether; and therefore they may very well ſtudy at their benefices. Thirdly, for the caſe of extraordinary ſervice of the church; as if ſome paſtor be ſent to a general council, or here to a convocation; and likewiſe for the caſe of neceſſity, as in the particular of infirmity of body, and the like, no man will contradict, but that there may be ſome ſubſtitution for ſuch a time. But the general caſe of neceſſity is the caſe of pluralities; the want of paſtors and inſufficiency of livings conſidered, *poſito*, that a man doth faithfully and inceſſantly divide his labours between two cures; which kind of neceſſity I come now to ſpeak of in the handling of pluralities.

For pluralities, in caſe the number of able miniſters were ſufficient, and the value of benefices were ſufficient, then pluralities were in no ſort tolerable. But we muſt take heed, we deſire not contraries. For to deſire that every pariſh ſhould be furniſhed with a ſufficient preacher, and to deſire that pluralities be forthwith taken away, is to deſire things contrary; conſidering, *de facto*, there are not ſufficient preachers for every pariſh: whereto add likewiſe, that there is not ſufficient living and maintenance in many pariſhes, to maintain a preacher; and it maketh the impoſſibility yet much the greater. The remedies *in rerum natura* are but three; union, permutation, and ſupply. Union of ſuch benefices as have the living too ſmall, and the pariſh not too great, and are adjacent. Permutation, to make benefices more compatible, though men be over-ruled to ſome loſs in changing a better for a nearer. Supply, by ſtipendiary preachers, to be rewarded with ſome liberal ſtipends, to ſupply, as they may, ſuch places which are unfurniſhed of ſufficient paſtors: as Queen Elizabeth, amongſt other her gracious acts, did erect certain of them in Lancaſhire; towards which penſions, I ſee no reaſon but reading miniſters, if they have rich benefices, ſhould be charged.

Touching the Proviſion for ſufficient Maintenance in the Church.

TOuching church-maintenance, it is well to be weighed what is *jure divino*, and what *jure poſitivo*. It is a conſtitution of the divine law, from which human laws cannot derogate, that thoſe which feed the flock, ſhould live of the flock; that thoſe that ſerve at the altar, ſhould live of the altar; that thoſe which diſpenſe ſpiritual things, ſhould reap temporal things; of which it is alſo an appendix, that the proportion of this maintenance be not ſmall or neceſſitous, but plentiful and liberal. So then, that all the places and offices of the church be provided of ſuch a dotation, that they may be maintained, according to their ſeveral degrees, is a conſtitution permanent and perpetual: but for particularity of the endowment, whether it ſhould conſiſt of tithes, or lands, or penſions, or mixt, might make a queſtion of convenience, but no queſtion of preciſe neceſſity. Again, that the caſe of the church *de facto* is ſuch, that there is want in the church of patrimony, is confeſſed. For the principal places, namely, the biſhops livings, are in ſome particulars not ſufficient; and therefore enforced to be ſupplied by toleration of Commendams, things of themſelves unfit, and ever held of no good report. And as for the benefices and paſtors places, it is manifeſt that very many of them are very weak and penurious. On the other ſide, that there was a time when the church was rather burthened with ſuperfluity, than with lack, that is likewiſe apparent; but it is long ſince; ſo as the fault was in others, the want redoundeth unto us. Again, that it were to be wiſhed that impropriations were returned to the church as the moſt proper

and natural endowments thereof, is a thing likewiſe wherein mens judgments will not much vary. Nevertheleſs, that it is an impoſſibility to proceed now, either to their reſumption or redemption, is as plain on the other ſide. For men are ſtated in them by the higheſt aſſurance of the kingdom, which is, act of parliament; and the value of them amounteth much above ten ſubſidies; and the reſtitution muſt of neceſſity paſs their hands, in whoſe hands they are now in poſſeſſion or intereſt.

But of theſe things which are manifeſtly true, to infer and ground ſome concluſions. Firſt, in mine own opinion and ſenſe, I muſt confeſs (let me ſpeak it with reverence) that all the parliaments ſince 27 and 31 of Henry VIII. (who gave away impropriations from the church) ſeem to me to ſtand in a ſort obnoxious, and obliged to God in conſcience to do ſomewhat for the church, to reduce the patrimony thereof to a competency. For ſince they have debarred Chriſt's wife of a great part of her dowry, it were reaſon they made her a competent jointure. Next to ſay, that impropriations ſhould be only charged, that carrieth neither poſſibility nor reaſon. Not poſſibility, for the reaſons touched before: not reaſon, becauſe if it be conceived, that if any other perſon be charged, it ſhould be a re-charge, or double-charge, inaſmuch as he payeth tythes already, that is a thing miſtaken. For it muſt be remembred, that as the realm gave tythes to the church, ſo the realm ſince again hath given tythes away from the church unto the King, as they may give their eighth ſheaf or ninth ſheaf. And therefore the firſt gift being evacuated, it cannot go in defeaſance or diſcharge of that perpetual bond, wherewith men are bound to maintain God's miniſters. And ſo we ſee in example, that divers godly and well diſpoſed perſons, not impropriators, are content to encreaſe their preachers livings; which, though in law it be but a benevolence, yet before God it is a conſcience. Farther, that impropriation ſhould not be ſomewhat more deeply charged than other revenues of like value, methinks, cannot well be denied, both in regard of the ancient claim of the church, and the intention of the firſt giver: and again, becauſe they have paſſed in valuation between man and man ſomewhat at the leſs rate, in regard of the ſaid pretence or claim of the church in conſcience before God. But of this point, touching church-maintenance, I do not think fit to enter into farther particularity, but reſerve the ſame to a fitter time.

Thus have I in all humbleneſs and ſincerity of heart, to the beſt of my underſtanding, given your Majeſty tribute of my cares and cogitations in this holy buſineſs, ſo highly tending to God's glory, your Majeſty's honour, and the peace and welfare of your ſtates: inſomuch as I am perſuaded that the papiſts themſelves ſhould not need ſo much the ſeverity of penal laws, if the ſword of the Spirit were better edged, by ſtrengthening the authority, and ſuppreſſing the abuſes in the church.

To conclude, renewing my moſt humble ſubmiſſion of all that I have ſaid to your Majeſty's moſt high wiſdom, and again, moſt humbly craving pardon for any errors committed in this writing; which the ſame weakneſs of judgment that ſuffered me to commit them, would not ſuffer me to diſcover them, I end with my devout and fervent prayer to God, that as he hath made your Majeſty the corner-ſtone, in joining your two kingdoms, ſo you may be alſo as a corner-ſtone to unite and knit together theſe differences in the church of God; to whoſe heavenly grace and never-erring direction, I commend your Majeſty's ſacred perſon, and all your doings.

THE TRANSLATION OF CERTAIN PSALMS INTO ENGLISH VERSE.

By the Right Honourable

FRANCIS Lord Verulam, Viſcount St. Alban.

To his very good Friend,

Mr. GEORGE HERBERT.

THE pains that it pleaſed you to take about ſome of my writings, I cannot forget; which did put me in mind to dedicate to you this poor exerciſe of my ſickneſs. Beſides, it being my manner for dedications, to chooſe thoſe that I hold moſt fit for the argument, I thought, that in reſpect of divinity and poeſy met (whereof the one is the matter, the other the ſtyle of this little writing) I could not make better choice: ſo, with ſignification of my love and acknowledgment, I ever reſt

Your affectionate Friend,

FR. ST. ALBAN.

The TRANSLATION of the I^st PSALM.

WHO never gave to wicked reed
A yielding and attentive ear;
Who never ſinners paths did tread,
Nor ſate him down in ſcorner's chair;
But maketh it his whole delight
On law of God to meditate;
And therein ſpendeth day and night:
That man is in a happy ſtate.

He ſhall be like the fruitful tree,
Planted along a running ſpring,
Which, in due ſeaſon, conſtantly
A goodly yield of fruit doth bring:
Whoſe leaves continue always green,
And are no prey to winter's pow'r:
So ſhall that man not once be ſeen
Surprized with an evil hour.

With wicked men it is not ſo,
Their lot is of another kind:
All as the chaff, which to and fro
Is toſs'd at mercy of the wind.
And when he ſhall in judgment plead,
A caſting ſentence bide he muſt:
So ſhall he not lift up his head
In the aſſembly of the juſt.

For why? the Lord hath ſpecial eye
To be the godly's ſtay at call:
And hath given over, righteouſly,
The wicked man to take his fall.

The TRANSLATION of the XIIth PSALM.

HELP, Lord, for godly men have took their flight,
And left the earth to be the wicked's den:
Not one that ſtandeth faſt to truth and right,
But fears, or ſeeks to pleaſe, the eyes of men.
When one with other falls in talk apart,
Their meaning go'th not with their words, in proof;
But fair they flatter, with a cloven heart,
By pleaſing words, to work their own behoof.

But God cut off the lips, that are all ſet
To trap the harmleſs ſoul, that peace hath vow'd;
And pierce the tongues, that ſeek to counterfeit
The confidence of truth, by lying loud:
Yet ſo they think to reign, and work their will
By ſubtile ſpeech, which enters ev'ry where;
And ſay: Our tongues are ours, to help us ſtill;
What need we any higher pow'r to fear?

Now for the bitter ſighing of the poor,
The Lord hath ſaid, I will no more forbear
The wicked's kingdom to invade and ſcour,
And ſet at large the men reſtrain'd in fear.
And ſure the word of God is pure and fine,
And in the trial never loſeth weight;
Like noble gold, which, ſince it left the mine,
Hath ſeven times paſs'd through the fiery ſtrait.

And now thou wilt not firſt thy word forſake,
Nor yet the righteous man that leans thereto;
But wilt his ſafe protection undertake,
In ſpight of all their force and wiles can do.
And time it is, O Lord, thou didſt draw nigh;
The wicked daily do enlarge their bands;
And that which makes them follow ill a vie,
Rule is betaken to unworthy hands.

The TRANSLATION of the XC^th PSALM.

O Lord, thou art our home, to whom we fly,
And ſo haſt always been from age to age.
Before the hills did intercept the eye,
Or that the frame was up of earthly ſtage,
One God thou wert, and art, and ſtill ſhalt be;
The line of time, it doth not meaſure thee.

Both death and life obey thy holy lore,
And viſit in their turns, as they are ſent;
A thouſand years, with thee they are no more
Than yeſterday, which, ere it is, is ſpent:
Or as a watch by night, that courſe doth keep,
And goes, and comes, unwares to them that ſleep.

Thou carry'ſt man away as with a tide:
Then down ſwim all his thoughts, that mounted high:
Much like a mocking dream, that will not bide,
But flies before the ſight of waking eye;
Or as the graſs, that cannot term obtain,
To ſee the ſummer come about again.

At morning, fair it muſters on the ground;
At ev'n it is cut down, and laid along:
And though it ſpared were, and favour found,
The weather would perform the mower's wrong:
Thus haſt thou hang'd our life on brittle pins,
To let us know it will not bear our ſins.

Thou bury'ſt not within oblivion's tomb
Our treſpaſſes, but ent'reſt them aright;
Ev'n thoſe that are conceiv'd in darkneſs' womb,
To thee appear as done at broad day-light.
As a tale told, which ſometimes men attend,
And ſometimes not, our life ſteals to an end.

The life of man is threeſcore years and ten,
Or, if that he be ſtrong, perhaps fourſcore;
Yet all things are but labour to him then,
New ſorrows ſtill come on, pleaſures no more.
Why ſhould there be ſuch turmoil and ſuch ſtrife
To ſpin in length this feeble line of life?

But who conſiders duly of thine ire?
Or doth the thoughts thereof wiſely embrace?
For thou, O God, art a conſuming fire:
Frail man, how can he ſtand before thy face?
If thy diſpleaſure thou doſt not refrain,
A moment brings all back to duſt again.

Teach us, O Lord, to number well our days,
Thereby our hearts to wiſdom to apply;
For that which guides man beſt in all his ways,
Is meditation of mortality.
This bubble light, this vapour of our breath,
Teach us to conſecrate to hour of death.

Return unto us, Lord, and balance now,
With days of joy, our days of miſery;
Help us right ſoon, our knees to thee we bow,
Depending wholly on thy clemency;
Then ſhall thy ſervants both with heart and voice
All the days of their life in thee rejoice.

Begin thy work, O Lord, in this our age,
Shew it unto thy ſervants that now live;
But to our children raiſe it many a ſtage,
That all the world to thee may glory give.
Our handy-work likewiſe, as fruitful tree,
Let it, O Lord, bleſſed, not blaſted be.

The TRANSLATION of the CIV^th PSALM.

FAther and King of pow'rs, both high and low,
Whoſe ſounding fame all creatures ſerve to blow;
My ſoul ſhall with the reſt ſtrike up thy praiſe,
And carol of thy works, and wondrous ways.
But who can blaze thy beauties, Lord, aright?
They turn the brittle beams of mortal ſight.
Upon thy head thou wear'ſt a glorious crown,
All ſet with virtues poliſh'd with renown:
Thence round about a ſilver veil doth fall
Of chryſtal light, mother of colours all.
The compaſs heav'n, ſmooth without grain, or fold,
All ſet with ſpangs of glitt'ring ſtars untold,
And ſtrip'd with golden beams of power unpent,
Is raiſed up for a removing tent.
Vaulted and arched are his chamber beams
Upon the ſeas, the waters, and the ſtreams:
The clouds as chariots ſwift do ſcour the ſky;
The ſtormy winds upon their wings do fly.

His angels ſpirits are, that wait his will,
As flames of fire his anger they fulfil.
In the beginning, with a mighty hand,
He made the earth by counterpoiſe to ſtand;
Never to move, but to be fixed ſtill;
Yet hath no pillars but his ſacred will.
This earth, as with a veil, once cover'd was,
The waters over-flowed all the maſs:
But upon his rebuke away they fled,
And then the hills began to ſhew their head;
The vales their hollow boſoms open'd plain,
The ſtreams ran trembling down the vales again:
And that the earth no more might drowned be
He ſet the ſea his bounds of liberty;
And though his waves reſound, and beat the ſhore,
Yet it is bridled by his holy lore.
Then did the rivers ſeek their proper places,
And found their heads, their iſſues, and their races;
The ſprings do feed the rivers all the way,
And ſo the tribute to the ſea repay:
Running along through many a pleaſant field,
Much fruitfulneſs unto the earth they yield:
That know the beaſts and cattle feeding by,
Which for to ſlake their thirſt do thither hie.
Nay deſert grounds the ſtreams do not forſake,
But through the unknown ways their journey take:
The aſſes wild, that hide in wilderneſs,
Do thither come, their thirſt for to refreſh.
The ſhady trees along their banks do ſpring,
In which the birds do build, and ſit and ſing;
Stroking the gentle air with pleaſant notes,
Plaining, or chirping through their warbling throats.
The higher grounds, where waters cannot riſe,
By rain and dews are water'd from the ſkies;
Cauſing the earth put forth the graſs for beaſts,
And garden herbs, ſerv'd at the greateſt feaſts;
And bread, that is all viands firmament,
And gives a firm and ſolid nouriſhment;
And wine man's ſpirits for to recreate;
And oil his face for to exhilarate.
The ſappy cedars, tall like ſtately tow'rs,
High-flying birds do harbour in their bow'rs;
The holy ſtorks, that are the travellers,
Chooſe for to dwell and build within the firs;
The climbing goats hang on ſteep mountains ſide;
The digging conies in the rocks do bide.
The moon, ſo conſtant in inconſtancy,
Doth rule the monthly ſeaſons orderly;
The ſun, eye of the world, doth know his race,
And when to ſhew, and when to hide his face.
Thou makeſt darkneſs, that it may be night,
When as the ſavage beaſts, that fly the light,
(As conſcious of man's hatred) leave their den,
And range abroad, ſecur'd from ſight of men.
Then do the foreſts ring of lions roaring,
That aſk their meat of God, their ſtrength reſtoring;
But when the day appears, they back do fly,
And in their dens again do lurking lie.

Then man goes forth to labour in the field,
Whereby his grounds more rich encreaſe may yield.
O Lord, thy providence ſufficeth all;
Thy goodneſs, not reſtrain'd, but general
Over thy creatures: the whole earth doth flow
With thy great largeſs pour'd forth here below.
Nor is it earth alone exalts thy name,
But ſeas and ſtreams likewiſe do ſpread the ſame.
The rolling ſeas unto the lot doth fall
Of beaſts innumerable, great and ſmall;
There do the ſtately ſhips plow up the floods,
The greater navies look like walking woods;
The fiſhes there far voyages do make,
To divers ſhores their journey they do take.
There haſt thou ſet the great Leviathan,
That makes the ſeas to ſeeth like boiling pan.
All theſe do aſk of thee their meat to live,
Which in due ſeaſon thou to them doſt give.
Ope thou thy hand, and then they have good fare;
Shut thou thy hand, and then they troubled are.
All life and ſpirit from thy breath proceed,
Thy word doth all things generate and feed.
If thou withdraw'ſt it, then they ceaſe to be,
And ſtraight return to duſt and vanity;
But when thy breath thou doſt ſend forth again,
Then all things do renew, and ſpring amain;
So that the earth, but lately deſolate,
Doth now return unto the former ſtate.
The glorious Majeſty of God above
Shall ever reign in mercy and in love:
God ſhall rejoice all his fair works to ſee,
For as they come from him all perfect be.
The earth ſhall quake, if ought his wrath provoke;
Let him but touch the mountains they ſhall ſmoke.
As long as life doth laſt I hymns will ſing,
With chearful voice, to the eternal King;
As long as I have being, I will praiſe
The works of God, and all his wondrous ways.
I know that he my words will not deſpiſe,
Thankſgiving is to him a ſacrifice.
But as for ſinners, they ſhall be deſtroy'd
From off the earth, their places ſhall be void.
Let all his works praiſe him with one accord;
Oh praiſe the Lord, my ſoul; praiſe ye the Lord!

The TRANSLATION of the CXXVI^th PSALM.

WHEN God return'd us graciouſly
Unto our native land,
We ſeem'd as in a dream to be,
And in a maze to ſtand.

The heathen likewiſe they could ſay:
The God, that theſe men ſerve,
Hath done great things for them this day,
Their nation to preſerve.

'Tis

'Tis true, God hath pour'd out his grace
On us abundantly,
For which we yield him pſalms and praiſe,
And thanks with jubilee.

O Lord, turn our captivity,
As winds, that blow at ſouth,
Do pour the tides with violence
Back to the rivers mouth.

Who ſows in tears, ſhall reap in joy,
The Lord doth ſo ordain;
So that his ſeed be pure and good,
His harveſt ſhall be gain.

The TRANSLATION of the CXXXVII th PSALM.

WHEN as we ſat all ſad and deſolate,
By Babylon upon the river's ſide,
Eas'd from the taſks which in our captive ſtate
We were enforced daily to abide,
Our harps we had brought with us to the field,
Some ſolace to our heavy ſouls to yield.

But ſoon we found we fail'd of our account,
For when our minds ſome freedom did obtain,
Straightways the memory of Sion Mount
Did cauſe afreſh our wounds to bleed again;
So that with preſent griefs, and future fears,
Our eyes burſt forth into a ſtream of tears.

As for our harps, ſince ſorrow ſtruck them dumb,
We hang'd them on the willow trees were near;
Yet did our cruel maſters to us come,
Aſking of us ſome Hebrew ſongs to hear;
Taunting us rather in our miſery,
Than much delighting in our melody.

Alas (ſaid we) who can once force or frame
His grieved and oppreſſed heart to ſing
The praiſes of Jehovah's glorious name,
In baniſhment, under a foreign King?
In Sion is his ſeat and dwelling place,
Thence doth he ſhew the brightneſs of his face.

Jeruſalem, where God his throne hath ſet,
Shall any hour abſent thee from my mind?
Then let my right hand quite her ſkill forget,
Then let my voice and words no paſſage find;
Nay if I do not thee prefer in all,
That in the compaſs of my thoughts can fall.

Remember

Remember thou, O Lord, the cruel cry
Of Edom's children, which did ring and ſound,
Inciting the Chaldean's cruelty,
"Down with it, down with it, even unto the ground."
In that good day repay it unto them,
When thou ſhall viſit thy Jeruſalem.

And thou, O Babylon, ſhalt have thy turn
By juſt revenge, and happy ſhall he be,
That thy proud walls and tow'rs ſhall waſte and burn,
And as thou didſt by us, ſo do by thee.
Yea happy he, that takes thy childrens bones,
And daſheth them againſt the pavement ſtones.

The TRANSLATION of the CXLIX^th PSALM.

O Sing a new ſong to our God above,
Avoid profane ones, 'tis for holy quire:
Let Iſrael ſing ſongs of holy love
To him that made them, with their hearts on fire:
Let Sion's ſons lift up their voice, and ſing
Carols and anthems to their heav'nly King.

Let not your voice alone his praiſe forth tell,
But move withal, and praiſe him in the dance;
ymbals and harps let them be tuned well,
Tis he that doth the poors eſtate advance:
Do this not only on the ſolemn days,
But on your ſecret beds your ſpirits raiſe.

O let the ſaints bear in their mouth his praiſe,
And a two-edged ſword drawn in their hand,
Therewith for to revenge the former days
Upon all nations that their zeal withſtand;
To bind their Kings in chains of iron ſtrong,
And manacle their nobles for their wrong.

Expect the time, for 'tis decreed in heav'n,
Such honour ſhall unto his ſaints be giv'n.

LETTERS.

[illegible]

LETTERS in the reign of Queen ELIZABETH.

I.

It may pleaſe your good Lordſhip,

I Am ſorry the joint maſque from the four inns of court faileth; wherein I conceive there is no other ground of that event but impoſſibility. Nevertheleſs, becauſe it falleth out that at this time Grays-Inn is well furniſhed of gallant young gentlemen, your lordſhip may be pleaſed to know, that rather than this occaſion ſhall paſs without ſome demonſtration of affection from the inns of court, there are a dozen gentlemen of Grays-Inn, that out of the honour which they bear to your lordſhip and my lord chamberlain, to whom at their laſt maſque they were ſo much bounden, will be ready to furniſh a maſque; wiſhing it were in their power to perform it according to their mind. And ſo for the preſent I humbly take my leave, reſting

From an original in the Earl of Oxford's library.

Your Lordſhip's very humble and much bounden,

FR. BACON.

II. A LETTER of ceremony to Queen ELIZABETH, upon the ſending of a new-year's gift.

It may pleaſe your ſacred Majeſty,

ACCORDING to the ceremony of the time, I would not forget, in all humbleneſs, to preſent your Majeſty with a ſmall new-year's gift: nothing to my mind. And therefore to ſupply it, I can but pray to God to give your Majeſty his new-year's gift; that is, a new year that ſhall be as no year to your body, and as a year with two harveſts to your coffers; and every other way proſperous and gladſome. And ſo I remain,

Your Majeſty's loyal and obedient ſubject.

III. A LETTER of ceremony to Queen ELIZABETH, upon the ſending of a new-year's gift.

Moſt excellent ſovereign Miſtreſs,

THE only new-year's gift which I can give your Majeſty, is that which God hath given to me; which is, a mind in all humbleneſs to wait upon your commandments and buſineſs: wherein I would to God, that I were hooded, that I ſaw leſs; or that I could perform more: for now I am like a hawk that bates, when I ſee occaſion of ſervice, but cannot fly becauſe I am tied to another's fiſt. But mean while, I continue my preſumption of making to your Majeſty my poor oblation of a garment, as unworthy the wearing as his ſervice that ſends it: but the approach to your excellent perſon may give worth to both; which is all the happineſs I aſpire unto.

IV. To

IV. To the Queen.

It may pleaſe your ſacred Majeſty,

Probably wrote 1600. I Would not fail to give your Majeſty my moſt humble and due thanks, for your royal choice of ſuch commiſſioners in the great ſtar-chamber cauſe; being perſons, beſides their honour, of ſuch ſcience and integrity: by whoſe report I doubt not but your Majeſty will find that, which you have been heretofore informed (both by my lord keeper, and by ſome much meaner perſon) touching the nature of that cauſe, to be true. This preparatory hearing doth already aſſail me, with new and enlarged offers of compoſition; which if I had born a mind to have harkened unto, this matter had been quenched long ago, without any benefit to your Majeſty. But your Majeſty's benefit is to me in greater regard than mine own particular: truſting to your Majeſty's gracious diſpoſition and royal word, that your Majeſty will include me in any extraordinary courſe of your ſovereign pleaſure, which your Majeſty ſhall like to take in this cauſe. The other man, I ſpoke to your Majeſty of, may, within theſe two terms, be in the ſame ſtraits, between your Majeſty's juſtice and mercy, that this man now is, if your Majeſty be ſo pleaſed. So moſt humbly craving pardon for my preſuming to ſeek acceſs for theſe few lines, I recommend your Majeſty to the moſt precious cuſtody, and beſt preſervation of the Divine Majeſty.

Your Majeſty's moſt humble, and entirely obedient ſervant and ſubject.

V. To the Queen.

It may pleaſe your excellent Majeſty,

I Preſume according to the ceremony and good manner of the time and my accuſtomed duty, in all humbleneſs to preſent your Majeſty with a ſimple gift; almoſt as far from anſwering my mind, as ſorting with your greatneſs; and therewith wiſh, that we may continue to reckon on, and ever, your Majeſty's happy years of reign: and they that reckon upon any other hopes, I would they might reckon ſhort and to their coſt. And ſo craving pardon moſt humbly, I commend your Majeſty to the preſervation of the divine goodneſs.

VI. To the Queen.

It may pleaſe your excellent Majeſty,

I Moſt humbly entreat your Majeſty, not to impute my abſence to any weakneſs of mind or unworthineſs. But, I aſſure your Majeſty, I do find envy beating ſo ſtrongly upon me, ſtanding as I do (if this be to ſtand) as it were not ſtrength of mind, but ſtupidity, if I ſhould not decline the occaſions; except I could do your Majeſty more ſervice than I can any ways diſcern that I am able to do. My courſe towards your Majeſty (God is my witneſs) hath been pure and unleavened: and never poor gentleman (as I am perſuaded) had a deeper and truer deſire and care of your glory, your ſafety, your repoſe of mind, your ſervice: wherein, if I have exceeded my outward vocation, I moſt humbly crave your Majeſty's pardon for my preſumption. On the other ſide, if I have come ſhort of my inward vocation, I moſt humbly crave God's pardon for quenching the Spirit. But in this mind I find ſuch ſolitude, and want of comfort, which I judge to be, becauſe I take duty too exactly, and not according to the dregs of this age, wherein the old anthem might never be more truly ſung, *Totus mundus in maligno poſitus eſt.* My life hath been threatned, and my name libelled, which I count an honour. But theſe are the practices of thoſe whoſe deſpairs are dangerous, but yet not ſo dangerous

as their hopes; or elſe the devices of ſome, that would put out all your Majeſty's lights, and fall on reckoning how many years you have reigned; which I beſeech our bleſſed Saviour may be doubled, and that I may never live to ſee any eclipſe of your glory, interruption of ſafety, or indiſpoſition of your perſon; which I commend to the Divine Majeſty, who keep you and fortify you.

This ſeems to refer to the E. of Eſſex, 1600.

VII. To my Lord Treaſurer BURGHLEY, 1591.

My Lord,

WITH as much confidence as mine own honeſt and faithful devotion unto your ſervice, and your honourable correſpondance unto me and my poor eſtate can breed in a man, do I commend myſelf unto your lordſhip. I wax now ſomewhat ancient; * one and thirty years is a great deal of ſand in the hour-glaſs. My health, I thank God, I find confirmed; and I do not fear that action ſhall impair it; becauſe I account my ordinary courſe of ſtudy and meditation to be more painful than moſt parts of action are. I ever bare a mind (in ſome middle place that I could diſcharge) to ſerve her majeſty; not as a man born under Sol, that loveth honour; nor under Jupiter, that loveth buſineſs (for the contemplative planet carrieth me away wholly:) but as a man born under an excellent ſovereign, that deſerveth the dedication of all mens abilities. Beſides, I do not find in myſelf ſo much ſelf-love, but that the greater part of my thoughts are to deſerve well (if I were able) of my friends, and namely of your lordſhip; who being the Atlas of this common-wealth, the honour of my houſe, and the ſecond founder of my poor eſtate, I am tied by all duties, both of a good patriot, and of an unworthy kinſman, and of an obliged ſervant, to employ whatſoever I am, to do you ſervice. Again, the meanneſs of my eſtate doth ſomewhat move me: for though I cannot accuſe myſelf, that I am either prodigal or ſlothful, yet my health is not to ſpend, nor my courſe to get. Laſtly, I confeſs that I have as vaſt contemplative ends, as I have moderate civil ends: for I have taken all knowledge to be my province; and if I could purge it of two ſorts of rovers, whereof the one with frivolous diſputations, confutations, and verboſities; the other with blind experiments and auricular traditions and impoſtures, hath committed ſo many ſpoils; I hope I ſhould bring in induſtrious obſervations, grounded concluſions, and profitable inventions and diſcoveries; the beſt ſtate of that province. This, whether it be curioſity, or vain glory, or nature, or (if one take it favourably) *philanthropia*, is ſo fixed in my mind, as it cannot be removed. And I do eaſily ſee, that place of any reaſonable countenance doth bring commandment of more wits than of a man's own; which is the thing I greatly affect. And for your lordſhip, perhaps you ſhall not find more ſtrength and leſs encounter in any other. And if your lordſhip ſhall find now or at any time, that I do ſeek or affect any place, whereunto any that is nearer unto your lordſhip ſhall be concurrent, ſay then that I am a moſt diſhoneſt man. And if your lordſhip will not carry me on, I will not do as Anaxagoras did, who reduced himſelf with contemplation unto voluntary poverty: but this I will do, I will ſell the inheritance that I have, and purchaſe ſome leaſe of quick revenue, or ſome office of gain, that ſhall be executed by deputy, and ſo give over all care of ſervice, and become ſome ſorry book-maker, or a true pioneer in that mine of truth, which (he ſaid) lay ſo deep. This which I have writ unto your lordſhip, is rather thoughts than words, being ſet down without all art, diſguiſing, or reſervation: wherein I have done honour both to your lordſhip's wiſdom, in judging that that will be beſt believed of your lordſhip which is trueſt; and to your lordſhip's good nature, in retaining nothing from you. And even ſo, I wiſh your lordſhip all happineſs, and to myſelf means and occaſion to be added to my faithful deſire to do you ſervice. *From my lodging at Gray's-Inn.*

* Therefore wrote 1591.

VIII. To the Lord Treaſurer BURGHLEY.

My ſingular good Lord,

YOur lordſhip's comfortable relation of her majeſty's gracious opinion and meaning towards me, though at that time your leiſure gave me not leave to ſhew how I was affected therewith; yet upon every repreſentation thereof it entereth and ſtriketh more deeply into me, as both my nature and duty preſſeth me to return ſome ſpeech of thankfulneſs. It muſt be an exceeding comfort and encouragement to me, ſetting forth and putting myſelf in way towards her majeſty's ſervice, to encounter with an example ſo private and domeſtical, of her majeſty's gracious goodneſs and benignity; being made good and verified in my father, ſo far forth, as it extendeth to his poſterity; accepting them as commended by his ſervice, during the nonage (as I may term it) of their own deſerts. I, for my part, am very well content, that I take leaſt part, either of his abilities of mind, or of his worldly advancement; both which he held and received, the one of the gift of God immediately, the other of her majeſty's gift: yet, in the loyal and earneſt affection which he bare to her majeſty's ſervice, I truſt my portion ſhall not be with the leaſt: nor in proportion with the youngeſt birth. For methinks his precedent ſhould be a ſilent charge, upon his bleſſing, unto us all, in our degrees, to follow him afar off, and to dedicate unto her majeſty's ſervice both the uſe and ſpending of our lives. True it is, that I muſt needs acknowledge myſelf prepared and furniſhed thereunto with nothing but with a multitude of lacks and imperfections; but calling to mind how diverſly, and in what particular providence God hath declared himſelf to tender the ſtate of her majeſty's affairs, I conceive and gather hope, that thoſe whom he hath in a manner preſs'd for her majeſty's ſervice, by working and imprinting in them a ſingle and zealous mind to beſtow their duties therein; he will ſee them accordingly appointed of ſufficiency convenient for the rank and ſtanding where they ſhall be employed: ſo as, under this her majeſty's bleſſing, I truſt to receive a larger allowance of God's graces. And as I may hope for this, ſo I can aſſure and promiſe for my endeavour, that it ſhall not be in fault; but what diligence can entitle me unto, that I doubt not to recover. And now ſeeing it hath pleaſed her majeſty to take knowledge of this my mind, and to vouchſafe to appropriate me unto her ſervice, preventing any deſert of mine with her princely liberality; firſt, I humbly do beſeech your lordſhip, to preſent to her majeſty my more than humble thanks for the ſame: and withal, having regard to my own unworthineſs to receive ſuch favour, and to the ſmall poſſibility in me to ſatisfy and anſwer what her majeſty conceiveth, I am moved to become a moſt humble ſuitor to her majeſty, that this benefit alſo may be affixed unto the other; which is, that if there appear in me no ſuch towardneſs of ſervice, as it may be her majeſty doth benignly value and aſſeſs me at, by reaſon of my ſundry wants, and the diſadvantage of my nature, being unapt to lay forth the ſimple ſtore of thoſe inferior gifts which God hath allotted unto me, moſt to view; yet that it would pleaſe her excellent majeſty, not to account my thankfulneſs the leſs, for that my diſability is great to ſhew it; but to ſuſtain me in her majeſty's gracious opinion, whereupon I only reſt, and not upon any expectation of deſert to proceed from myſelf towards the contentment thereof. But if it ſhall pleaſe God to ſend forth an occaſion whereby my faithful affection may be tried, I truſt it ſhall ſave me labour for ever making more proteſtation of it hereafter. In the mean time, howſoever it be not made known to her majeſty, yet God knoweth it through the daily ſolicitations wherewith I addreſs myſelf unto him, in unfeigned prayer, for the multiplying of her majeſty's proſperities. To your lordſhip alſo, whoſe recommendation, I know right well, hath been material to advance her majeſty's good opinion of me, I can be but a bounden ſervant. So much may I ſafely promiſe, and purpoſe to be, ſeeing publick and private bonds vary not, but

that my ſervice to her majeſty and your lordſhip draw in a line. I wiſh therefore to ſhew it with as good proof, as I can ſay it in good faith, etc.

Your Lordſhip's etc.

IX. To the Lord Treaſurer BURGHLEY.

It may pleaſe your good Lordſhip,

I Am to give you humble thanks for your favourable opinion, which, by Mr. Secretary's report I find, you conceive of me, for the obtaining of a good place, which ſome of my honourable friends have wiſhed unto me *nec opinanti*. I will uſe no reaſon to perſuade your lordſhip's mediation, but this, that your lordſhip, and my other friends, ſhall in this beg my life of the queen; for, I ſee well, the bar will be my bier, as I muſt and will uſe it, rather than my poor eſtate or reputation ſhall decay. But I ſtand indifferent, whether God call me, or her majeſty. Had I that in poſſeſſion, which, by your lordſhip's only means, againſt the greateſt oppoſition, her majeſty granted me, I would never trouble her majeſty, but ſerve her ſtill voluntarily without pay. Neither do I, in this, more than obey my friends conceits, as one that would not be wholly wanting to myſelf. Your lordſhip's good opinion doth ſomewhat confirm me, as that I take comfort in above all others; aſſuring your lordſhip, that I never thought ſo well of myſelf for any one thing, as that I have found a fitneſs, to my thinking, in myſelf to obſerve and revere your virtues: for the continuance whereof, in the prolonging of your days, I will ſtill be your beadſman; and accordingly, at this time, commend your lordſhip to the divine protection.

X. To the Lord Treaſurer BURGHLEY.

Moſt honourable, and my very good Lord,

I Know I may commit an error in writing this letter, both in a time of great and weighty buſineſs, as alſo when myſelf am not induced thereto by any new particular occaſion; and therefore your lordſhip may impute to me either levity, or ignorance what appertaineth to good reſpects and forwardneſs of dealing, eſpecially to an honourable perſon, in whom there is ſuch concurrence of *magnitudo honoris et oneris*, as it is hard to ſay whether is the greater. But I anſwer myſelf firſt, that I have ever noted it as a part of your lordſhip's excellent wiſdom, *parvis componere magna*; that you do not exclude inferior matters of acceſs, amongſt the care of great. And for myſelf, I thought it would better manifeſt what I deſire to expreſs, if I did write out of a deep and ſettled conſideration of my own duty, rather than upon the ſpur of a particular occaſion: and therefore (my ſingular good lord) *ex abundantia cordis*, I muſt acknowledge how greatly, and diverſly your lordſhip hath vouchſafed to tie me unto you by many your benefits. The reverſion of the office which your lordſhip only procured unto me, and carried through great and vehement oppoſition, though it yet bear no fruit, yet it is one of the faireſt flowers of my poor eſtate: your lordſhip's conſtant and ſerious endeavours to have me ſolicitor; your late honourable wiſhes for the place of the wards; together with your lordſhip's attempt to give me way by the remove of Mr. Solicitor; they be matters of ſingular obligation; beſides many other favours, as well by your lordſhip's grants from yourſelf, as by your commendation to others, which I have had for my help; and may juſtly perſuade myſelf, out of the few denials I have received, that fewer might have been, if mine own induſtry and good hap had been anſwerable to your lordſhip's goodneſs. But, on the other ſide, I moſt humbly pray your lordſhip's pardon if I ſpeak it; the time is yet to come that your lordſhip did ever uſe, or command or employ me, in my profeſſion, in any ſervices or occaſions of your lordſhip's own, or ſuch as are near unto your lordſhip; which

which hath made me fear ſometimes, that your lordſhip doth more honourably affect me, than throughly diſcern of my moſt humble and dutiful affection to your lordſhip again: which if it were not in me, I knew not whether I were unnatural, unthankful, or unwiſe. This cauſeth me moſt humbly to pray your lordſhip (and I know mine own caſe too well, to ſpeak it as weening I can do your lordſhip ſervice, but as willing to do it, as) to believe, that your lordſhip is upon juſt title a principal owner and proprietor of that, I cannot call, talent, but mite, that God hath given me; which I ever do, and ſhall devote to your ſervice. And in like humble manner, I pray your lordſhip to pardon mine errors, and not to impute unto me the errors of any other (which I know alſo themſelves have by this time left and forethought) but to conceive of me to be a man that daily profiteth in duty. It is true I do in part comfort myſelf, ſuppoſing that it is my weakneſs and inſufficiency that moveth your lordſhip, who hath ſo general a command, to uſe others more able. But let it be as it is, for duty only and homage I will boldly undertake, that nature and true thankfulneſs ſhall never give place to a politick dependance. Laſtly, I moſt humbly deſire your lordſhip to continue unto me the good favour, and countenance, and encouragement, in the courſe of my poor travails, whereof I have had ſome taſte and experience; for the which I yield your lordſhip my very humble good thanks. And ſo again, craving your honour's pardon for ſo long a letter, carrying ſo empty an offer of ſo impuiſſant a ſervice, but yet a true and unfeigned ſignification of an honeſt and vowed duty; I ceaſe, commending your lordſhip to the preſervation of the Divine Majeſty.

XI. A LETTER to the Lord Treaſurer BURGHLEY, in excuſe of his ſpeech in parliament againſt the triple ſubſidy.

It may pleaſe your Lordſhip,

I Was ſorry to find, by your lordſhip's ſpeech yeſterday, that my laſt ſpeech in parliament, delivered in diſcharge of my conſcience, and duty to God, her majeſty, and my country, was offenſive. If it were miſreported, I would be glad to attend your lordſhip to diſavow any thing I ſaid not; if it were miſconſtrued, I would be glad to expound myſelf, to exclude any ſenſe I meant not. If my heart be misjudged by imputation of popularity or oppoſition, by any envious or officious informer, I have great wrong; and the greater, becauſe the manner of my ſpeech did moſt evidently ſhew, that I ſpake ſimply and only to ſatisfy my conſcience, and not with any advantage, or policy to ſway the cauſe: and my terms carried all ſignification of duty and zeal towards her majeſty and her ſervice. It is true, that from the beginning, whatſoever was above a double ſubſidy, I did wiſh might (for precedent ſake) appear to be extraordinary; and (for diſcontent's ſake) might not have been levied upon the poorer ſort: though otherwiſe, I wiſhed it as riſing as I think this will prove, and more. This was my mind, I confeſs it: And therefore I moſt humbly pray your good lordſhip, firſt, to continue me in your own good opinion: and then to perform the part of an honourable friend towards your poor ſervant and alliance, in drawing her majeſty to accept of the ſincerity and ſimplicity of my heart, and to bear with the reſt, and reſtore me to her majeſty's good favour, which is to me dearer than my life. And ſo, etc.

Your Lordſhip's moſt humble in all duty.

XII.

XII. To the right honourable his very good Lord, the Lord Keeper of the great ſeal, etc.

My very good Lord,

I Was wiſhed to be here ready in expectation of ſome good effect; and therefore I commend my fortune to your lordſhip's kind and honourable furtherance. My affection inclineth me to be much [your] lordſhip's, and my courſe and way, in all reaſon and policy for myſelf, leadeth me to the ſame dependance: Hereunto if there ſhall be joined your lordſhip's obligation in dealing ſtrongly for me as you have begun, no man can be more yours. A timorous man is every body's, and a covetous man is his own. But if your lordſhip conſider my nature, my courſe, my friends, my opinion with her majeſty (if this eclipſe of her favour were paſt) I hope you will think, I am no unlikely piece of wood to ſhape you a true ſervant of. My preſent thankfulneſs ſhall be as much as I have ſaid. I humbly take my leave.

Your Lordſhip's true humble ſervant,

From Greenwich this 5th of April 1594.

FR. BACON.

XIII. To the right honourable my very good lord the Lord Keeper.

My Lord,

I Have, ſince I ſpake with your lordſhip, pleaded to the queen againſt herſelf for the injury ſhe doth Mr. Bacon in delaying him ſo long, and the unkindneſs ſhe doth me in granting no better expedition in a ſuit which I have followed ſo long, and ſo affectionately. And though I find that ſhe makes ſome difficulty, to have the more thanks, yet I do aſſure myſelf ſhe is reſolved to make him. I do write this not to ſolicit your lordſhip to ſtand firm in aſſiſting me, becauſe, I know, you hold yourſelf already tied by your affection to Mr. Bacon, and by your promiſe to me; but to acquaint your lordſhip with my reſolution to ſet up my reſt, and employ my uttermoſt ſtrength to get him placed before the term: So as I beſeech your lordſhip think of no temporizing courſe, for I ſhall think the queen deals unkindly with me, if ſhe do not both give him the place, and give it with favour and ſome extraordinary advantage. I wiſh your lordſhip all honour and happineſs; and reſt,

Your Lordſhip's very aſſured,

Endorſed, *My lord of Eſſex for Mr. Fran. Bacon to be ſolicitor.*

ESSEX.

XIV. To the right honourable his very good Lord, the Lord Keeper of the great ſeal.

My very good Lord,

SIR Thomas Egerton failing of your lordſhip, being newly gone, ſent his letter to me to ſee conveyed unto you, which I ſend incloſed; deſiring your lordſhip, according to your kind affection, to make the beſt uſe thereof for my furtherance. And I pray your lordſhip to call to remembrance my lord treaſurer's kind courſe, who affirmed directly all the reſt to be unfit. And becauſe *vis unita fortior*, I pray your lordſhip to take a time with the queen when my lord treaſurer is preſent. Thus in hope to-morrow will bring forth ſome good effect, I reſt,

Your Lordſhip's in all humble duty and ſervice,

FR. BACON.

XV. To the right honourable, etc. the Lord Keeper, etc.

My very good Lord,

BEcauſe I underſtand your lordſhip remaineth at court till this day, and that my lord of Eſſex writeth to me, that his lordſhip cometh to London, I thought good to remember your good lordſhip, and to requeſt you, as I touched in my laſt, that if my lord treaſurer be abſent, your lordſhip would forbear to fall into my buſineſs with her majeſty, leſt it might receive ſome foil before the time, when it ſhould be reſolutely dealt in. And ſo commending myſelf to your good favour, I moſt humbly take my leave.

From Gray's-Inn this 8th of April, 1594.

Your Lordſhip's in all humble duty and ſervice,

FR. BACON.

XVI. To the right honourable the Lord Keeper, etc.

It may pleaſe your good Lordſhip,

I Underſtand of ſome buſineſs like enough to detain the queen to-morrow, which maketh me earneſtly to pray your good lordſhip, as one that I have found to take my fortune to heart, to take ſome time to remember her majeſty of a ſolicitor this preſent day.

Our Tower employment ſtayeth, and hath done theſe three days, becauſe one of the principal offenders being brought to confeſs, and the other perſiſting in denial, her majeſty in her wiſdom thought beſt ſome time were given to him that is obſtinate, to bethink himſelf; which indeed is ſingular good in ſuch caſes. Thus deſiring your lordſhip's pardon, in haſte I commend my fortune and duty to your favour.

Your Lordſhip's moſt humbly to receive your commandments,

From Gray's-Inn this 13th of Auguſt, 1594.

FR. BACON.

XVII. To the right honourable the Lord Keeper, etc.

It may pleaſe your good Lordſhip,

AS your lordſhip hath at divers times helped me to paſs over contrary times, ſo I humbly pray you not to omit this favourable time. I cannot bear myſelf as I ſhould, till I be ſettled. And thus deſiring pardon, I leave your lordſhip to God's preſervation.

Your Lordſhip's moſt humbly at commandment,

From Gray's-Inn this 25th of Auguſt, 1594.

FR. BACON.

XVIII. To the right honourable his very good lord, the Lord Keeper, etc.

It may pleaſe your good Lordſhip,

I Was minded, according to the place of employment, though not of office, wherein I ſerve, for my better direction and the advancement of the ſervice, to have acquainted your lordſhip, now before the term, with ſuch her majeſty's cauſes as are in my hands. Which courſe intended out of duty, I do now find by that I hear from my lord of Eſſex, your lordſhip of your favour is willing

to uſe for my good, upon that ſatisfaction you may find in my travels. And I now ſend to your lordſhip, together with my humble thanks, to underſtand of your lordſhip's being at [leiſure] what part of to-morrow, to the end I may attend your lordſhip, which this afternoon I cannot, in regard of ſome conference I have appointed with Mr. Attorney General. And ſo I commend your honourable lordſhip to God's good preſervation.

Your good Lordſhip's humbly at your hon[ourable] commandments,

From Gray's-Inn the 25th of September, Friday.

FR. BACON.

XIX. To the right honourable the Lord Keeper, etc.

It may pleaſe your good Lordſhip,

I Received, at my lord of Eſſex laſt going from court, a meſſage of good aſſurance, which his lordſhip ſent to my brother and to myſelf; which was this: That her majeſty had ſteadfaſtly promiſed him to diſpatch my matter to-morrow. And ſomewhat her majeſty ſaid to myſelf, when I attended her upon ſome ſervice ſince, which I liked well, though it was with ſome doubtfulneſs, as, they ſay, her majeſty uſeth till the laſt hour. This I thought good to ſignify to your good lordſhip, both that your lordſhip may perceive how effectual and operative your lordſhip's laſt dealing with her majeſty was; and alſo that, now the wheel is going, your lordſhip would ſet it forward, the rather in reſpect of the neceſſity to go preſently in hand with theſe criminal cauſes, if the commiſſion ſhall hold according to the adjournment. And if her majeſty ſhould not be pleaſed preſently to give order for a patent, yet if your lordſhip may by her warrant give me warning to prepare myſelf, it will be ſome hold and ſatisfaction. So thinking long to have the ſtrength of place, to do your lordſhip acceptable ſervice, I leave your good lordſhip to God's good preſervation.

Your Lordſhip's moſt humbly at your hon[ourable] commandments,

From Gray's-Inn this 28th of September, 1594.

FR. BACON.

XX. To the right honourable the Lord Keeper, etc.

It may pleaſe your Lordſhip,

I Thought good to ſtep aſide for nine days, which is the durance of a wonder, and not for any diſlike in the world; for I think her majeſty hath done me as great a favour in making an end of this matter, as if ſhe had enlarged me from ſome reſtraint. And I humbly pray your lordſhip, if it ſo pleaſe you, to deliver to her majeſty from me, that I would have been glad to have done her majeſty ſervice now in the beſt of my years, and the ſame mind remains in me ſtill; and that it may be, when her majeſty hath tried others, ſhe will think of him that ſhe hath caſt aſide. For I will take it upon that which her majeſty hath often ſaid, that ſhe doth reſerve me, and not reject me. And ſo I leave your good lordſhip to God's good preſervation.

From Twicknam-Park this 20th of May, 1595. *Your Lordſhip's much bounden,*

Endorſed: Mr *Fr. Bacon his contentation to leave the ſolicitorſhip.*

FR. BACON.

XXI.

XXI. A LETTER to the lord treaſurer BURGHLEY, recommending his firſt ſuit, touching the ſolicitor's place.

My Lord,

AFTER the remembrance of my moſt humble duty, though I know, by late experience, how mindful your lordſhip vouchſafeth to be of me and my poor fortunes, ſince it pleaſed your lordſhip, during your indiſpoſition, when her majeſty came to viſit your lordſhip, to make mention of me for my employment and preferment; yet being now in the country, I do preſume that your lordſhip, who of yourſelf had ſo honourable care of the matter, will not think it a trouble to be ſolicited therein. My hope is, that whereas your lordſhip told me her majeſty was ſomewhat gravelled upon the offence ſhe took at my ſpeech in parliament; your lordſhip's favourable and good word (who hath aſſured me, that for your own part you conſtrued, that I ſpake to the beſt) will be as a good tide to remove her from that ſhelf. And it is not unknown to your good lordſhip, that I was the firſt of the ordinary ſort of the lower houſe of parliament that ſpake for the ſubſidy; and that which I after ſpake in difference, was but in circumſtances of time and manner, which methinks ſhould be no greater matter, ſince there is variety allowed in counſel, as a diſcord in muſick, to make it more perfect. But I may juſtly doubt, not ſo much her majeſty's impreſſion upon this particular, as her conceit otherwiſe of my inſufficiency; which though I acknowledge to be great, yet it will be the leſs becauſe I purpoſe not to divide myſelf between her majeſty and the cauſes of other men (as others have done) but to attend her buſineſs only; hoping that a whole man meanly able, may do as well as half a man better able. And if her majeſty think that ſhe ſhall make an adventure in uſing one that is rather a man of ſtudy, than of practice and experience; ſurely I may remember to have heard that my father (an example, I confeſs, rather ready than like) was made ſolicitor of the augmentation (a court of much buſineſs) when he had never practiſed, and was but twenty-ſeven years old; and Mr. Brograve was now, in my time, called to be attorney of the duchy, when he had practiſed little or nothing; and yet diſcharged his place with great ſufficiency. But theſe things and the like are as her majeſty ſhall be made capable of them; wherein, knowing what authority your lordſhip's commendation hath with her majeſty, I conclude with myſelf, that the ſubſtance of ſtrength which I may receive, will be from your lordſhip. It is true, my life hath been ſo private, as I have had no means to do your lordſhip ſervice; but yet, as your lordſhip knoweth, I have made offer of ſuch as I could yield: for as God hath given me a mind to love the publick; ſo incidently, I have ever had your lordſhip in ſingular admiration; whoſe happy ability her majeſty hath ſo long uſed, to her great honour and yours. Beſides, that amendment of ſtate or countenance, which I have received, hath been from your lordſhip. And therefore if your lordſhip ſhall ſtand a good friend to your poor ally, you ſhall but *tueri opus propriam*, which you have begun. And your lordſhip ſhall beſtow your benefit upon one that hath more ſenſe of obligation than of ſelf-love. Thus humbly deſiring pardon of ſo long a letter, I wiſh your lordſhip all happineſs. This 7th of June, 1595.

Your Lordſhip's in all humbleneſs to be commanded.

XXII. To the right honourable the Lord Keeper, etc.

It may pleaſe your good Lordſhip,

NOT able to attend your lordſhip myſelf, before your going to the court, by reaſon of an ague, which offered me a fit on Wedneſday morning, but ſince by abſtinence, I thank God, I have ſtarved it, ſo as now he hath turned

his back, I am chaſing him away with a little phyſick; I thought good to write theſe few words to your lordſhip, partly to ſignify my excuſe, if need be, that I aſſiſted not Mr. Attorney on Thurſday laſt in the ſtar-chamber, at which time, it is ſome comfort to me, that I hear by relation ſomewhat was generally taken hold of by the court, which I formerly had opened and moved; and partly to expreſs a little my conceit, touching the news which your lordſhip laſt told me from the queen, concerning a condition in law knit to an intereſt, which your lordſhip remembreth, and is ſuppoſed to be broken by misfeyance. Wherein ſurely my mind, as far as it appertaineth to me, is this, that as I never liked not ſo much as the coming in upon a leaſe by way of forfeiture, ſo I am ſo much enemy to myſelf, as I take no contentment in any ſuch hope of advantage. For as your lordſhip can give me beſt teſtimony, that I never in my life propounded any ſuch like motion, though I have been incited thereto; ſo the world will hardly believe, but that it is underhand quickened and nouriſhed from me. And truly, my lord, I would not be thought to ſupplant any man for great gain; and I humbly pray your lordſhip to continue your commendation and countenance to me in the courſe of the queen's ſervice that I am entered into: which when it ſhall pleaſe God to move the queen to * profit, I hope I ſhall give cauſe for your lordſhip to obtain as many thanks, as you have endured chidings. And ſo I commend your good lordſhip to God's good preſervation.

* *f.* perfect.

Your Lordſhip's moſt humbly at your hon[*ourable*] *commandment,*

From Gray's-Inn the 11th of June, 1595.

FR. BACON.

XXIII. To the right honourable the Lord Keeper, etc.

It may pleaſe your Lordſhip,

THERE hath nothing happened to me in the courſe of my buſineſs more contrary to my expectation, than your lordſhip's failing me, and croſſing me now in the concluſion, when friends are beſt tried. But now I deſire no more favour of your lordſhip, than I would do if I were a ſuitor in the chancery; which is this only, that you would do me right. And I for my part, though I have much to alledge, yet nevertheleſs, if I ſee her majeſty ſettle her choice upon an able man, ſuch a one as Mr. Serjeant Fleming, I will make no means to alter it. On the other ſide, if I perceive any inſufficient obſcure * idole man offered to her majeſty, then I think myſelf double bound to uſe the beſt means I can for myſelf; which I humbly pray your lordſhip I may do with your favour, and that you will not diſable me farther than is cauſe. And ſo I commend your lordſhip to God's preſervation,

* Ita MSS.

That beareth your Lordſhip all humble reſpect,

From Gray's-Inn the 28th of July, 1595.
Endorſed, in Lord Keeper's hand, *Mr. Bacon wronging me.*

FR. BACON.

XXIV. To the right honourable the Lord Keeper, etc.

It may pleaſe your Lordſhip,

I Thought it became me to write to your lordſhip, upon that which I have underſtood from my lord of Eſſex, who vouchſafed, as I perceive, to deal with your lordſhip of himſelf to join with him in the concluding of my buſineſs, and findeth your lordſhip hath conceived offence, as well upon my manner when I ſaw your lordſhip at Temple laſt, as upon a letter, which I did write to your lordſhip ſome time before. Surely, my lord, for my behaviour, I am well aſſured, I omitted no point of duty or ceremony towards your lordſhip. But I know too much of the court to beg a countenance in publick place, where I make account, I ſhall not receive it. And for my letter, the principal point of it was, that which I hope God will give me grace to perform, which

is, that if any idole may be offered to her majeſty, (ſince it is mixt with my particular) to inform her majeſty truly, which I muſt do, as long as I have a tongue to ſpeak, or a pen to write, or a friend to uſe. And farther I remember not of my letter, except it were that I writ, I hoped your lordſhip would do me no wrong, which hope I do ſtill continue. For if it pleaſe your lordſhip but to call to mind from whom I am deſcended, and by whom, next to God, her majeſty, and your own virtue, your lordſhip is aſcended; I know you will have a compunction of mind to do me any wrong. And therefore, good my lord, when your lordſhip favoureth others before me, do not lay the ſeparation of your love and favour upon myſelf. For I will give no cauſe, neither can I acknowledge any, where none is; but humbly pray your lordſhip to underſtand things as they are. Thus ſorry to write to your lordſhip in an argument, which is to me unpleaſant, though neceſſary, I commend your lordſhip to God's good preſervation.

From Twicknam-Park this 19th of Auguſt, 1595.

Your Lordſhip's in all humble reſpect,

FR. BACON.

XXV. To the right honourable the Lord Keeper, etc.

It may pleaſe your good Lordſhip,

I Am ſorry the opportunity permitteth me not to attend your lordſhip as I minded. But I hope your lordſhip will not be the leſs ſparing in uſing the argument of my being ſtudied and prepared in the queen's cauſes, for my furtherance, upon belief that I had imparted to your lordſhip my travels, which ſome time next week I mean to do. Neither have I been able to confer with Mr. Attorney, as I deſired, becauſe he was removing from one building to another. And beſides, he alledged his note-book was in the country at —— and ſo we reſpited it to ſome time next week. I think he will rather do me good offices than otherwiſe, except it be for the townſhip your lordſhip remembreth by the verſe. Thus I commend your honourable lordſhip to God's good preſervation.

Your Lordſhip's moſt humble at your hon[ourable] commandment,

From Gray's-Inn this 25th of September, 1595.

FR. BACON.

XXVI. To the right honourable my very good lord, the Lord Keeper of the great ſeal of England.

It may pleaſe your good Lordſhip,

MY not acquainting your lordſhip hath proceeded of my not knowing any thing, and of my not knowing of my abſence at Byſſam with my lady Ruſſel, upon ſome important cauſe of her ſon's. And as I have heard nothing, ſo I look for nothing, though my lord of Eſſex ſent me word, he would not write till his lordſhip had good news. But his lordſhip may go on in his affection, which nevertheleſs myſelf have deſired him to limit. But I aſſure your lordſhip, I can take no farther care for the matter. I am now at Twicknam-Park, where I think to ſtay: For her majeſty placing a ſolicitor, my travel ſhall not need in her cauſes, though whenſoever her majeſty ſhall like to employ me in any particular, I ſhall be ready to do her willing ſervice. This I write leſt your lordſhip might think my ſilence came of any conceit towards your lordſhip, which, I do aſſure you, I have not. And this needed I not to do, if I thought not ſo: For my courſe will not give me any ordinary occaſion to uſe your favour, whereof nevertheleſs I ſhall ever be glad. So I commend your good lordſhip to God's holy preſervation.

This 11th of October, 1595.

Your Lordſhip's humble, etc.

FR. BACON.

XXVII.

XXVII. To the right honourable the Lord Keeper, etc.

It may pleaſe your good Lordſhip,

I Conceive the end already made, which will, I truſt, be to me a beginning of good fortune, or at leaſt of content. Her majeſty by God's grace ſhall live and reign long, ſhe is not running away, I may truſt her. Or whether ſhe look towards me or no, I remain the ſame, not altered in my intention. If I had been an ambitious man, it would have overthrown me, but minded as I am, *Revertet benedictio mea in ſinum meum.* If I had made any reckoning of any thing to be ſtirred, I would have waited on your lordſhip, and will be at any time ready to wait on you to do you ſervice. So I commend your good lordſhip to God's holy preſervation.

Your Lordſhip's moſt humble at your hon[ourable] commandment,

From Twicknam-Park this 14th of October.
Endorſed: 14 *October* 95.

FR. BACON.

XXVIII. To the right honourable the Lord Keeper, etc.

My very good Lord,

I Received a letter from a very friend of mine, requeſting me to move your lordſhip, to put into the commiſſion for the ſubſidy, Mr. Richard Kempe, a reader of Gray's-Inn, and beſides born to good eſtate, being alſo my friend and familiar acquaintance. And becauſe I conceive the gentleman to be every way ſortable with the ſervice, I am bold to commend him to your lordſhip's good favour. And even ſo, with remembrance of my moſt humble duty, I reſt,

Your Lordſhip's affectionate to do you humble ſervice,

Twicknam-Park, July 3. 1593. [5]

FR. BACON.

XXIX. To the right honourable the Lord Keeper, etc.

My Lord,

IN my laſt conference with your lordſhip, I did intreat you both to forbear hurting of Mr. Fr. Bacon's cauſe, and to ſuſpend your judgment of his mind towards your lordſhip, till I had ſpoken with him. I went ſince that time to Twicknam-park to confer with him, and had ſignified the effect of our conference by letter ere this, if I had not hoped to have met with your lordſhip, and ſo to have delivered it by ſpeech. I told your lordſhip when I laſt ſaw you, that this manner of his was only a natural freedom, and plainneſs, which he had uſed with me, and in my knowledge with ſome other of his beſt friends, than any want of reverence towards your lordſhip; and therefore I was more curious to look into the moving cauſe of his ſtyle, than into the form of it; which now I find to be only a diffidence of your lordſhip's favour and love towards him, and no alienation of that dutiful mind which he hath borne towards your lordſhip. And therefore I am fully perſuaded, that if your lordſhip would pleaſe to ſend for him, there would grow ſo good ſatisfaction, as hereafter he ſhould enjoy your lordſhip's honourable favour, in as great a meaſure as ever, and your lordſhip have the uſe of his ſervice, who, I aſſure your lordſhip, is as ſtrong in his kindneſs, as you find him in his jealouſy. I will uſe no argument to perſuade your lordſhip, that I ſhould be glad of his being reſtored to your lordſhip's wonted favour; ſince your lordſhip both knoweth how much my credit is engaged in his fortune, and may eaſily

judge how ſorry I ſhould be, that a gentleman whom I love ſo much, ſhould lack the favour of a perſon whom I honour ſo much. And thus commending your lordſhip to God's beſt protection, I reſt,

Endorſed: 31 Auguſt, 95. *My lord of Eſſex to have me ſend for Mr. Bacon, for he will ſatisfy me.* In Lord Keeper's own hand.

Your Lordſhip's very aſſured,

ESSEX.

XXX. To the right honourable the Lord Keeper, etc.

My very good Lord,

THE want of aſſiſtance from them which ſhould be Mr. Fr. Bacon's friends, makes [me] the more induſtrious myſelf, and the more earneſt in ſolliciting mine own friends. Upon me the labour muſt lie of his eſtabliſhment, and upon me the diſgrace will light of his being refuſed. Therefore I pray your lordſhip, now account me not as a ſolicitor only of my friend's cauſe, but as a party intereſted in this: And employ all your lordſhip's favour to me, or ſtrength for me, in procuring a ſhort and ſpeedy end. For though I know, it will never be carried any other way, yet I hold both my friend and myſelf diſgraced by this protraction. More I would write, but that I know to ſo honourable and kind a friend, this which I have ſaid is enough. And I ſo commend your lordſhip to God's beſt protection, reſting,

[No date] *At your Lordſhip's commandment,*

ESSEX.

XXXI. The Earl of ESSEX's, LETTER to the Council, at his embarking for Spain. June 1596.

My very good Lords,

Suppoſed to be wrote by Mr. Bacon.

HAving taken order for all things that belong to our land-forces, and ſtaying only till the ſhips be ready to take in our ſoldiers; I am come aboard, as well to draw other men by my example to leave the ſhore, as to have time and leiſure to aſk account of myſelf what other duty I have to do, beſides the governing of thoſe troops, and the uſing of them to good purpoſe. In which meditation, as I firſt ſtudy to pleaſe my moſt gracious ſovereign, as well as to ſerve her; ſo my next care is, to leave your lordſhips well ſatisfied of my paſt carriage, ſince I was nominated to this ſervice; and apt to make favourable conſtruction of what I ſhall do hereafter.

In my paſt carriage I will neither plead merit, nor excuſe imperfections; for whatſoever I ſhall be able to do, I know, is leſs than I owe: and beſides my faults, my very faith and zeal (which are the beſt things in me) do make me commit errors. But I would fain approve the matter itſelf of undertaking this ſervice, to have been good, howſoever my former have been erroneous; or at leaſt my intent and ends unblameable, though my judgment were faulty. Your lordſhips know it hath been the wiſdom of all times, rather to attempt and do ſomething in another country, than to attend an enemy, and be in danger much in our own. And if this rule among the ancients was generally held true, it might be better allowed of us in particular caſes, where a ſtate, little in territory, not extraordinary rich, and defended only with itſelf, ſhall have to do with another ſtate, that hath many and ample dominions, the treaſure of the Indies, and all the mercenaries of Chriſtendom to ſerve it. For we have, as the Athenians had with the ancient uſurping Philip, *proelium facile, bellum difficile.* Therefore it is our diſadvantage to draw the war into length. And if any man in this kingdom ſhould be allowed to perſuade to prevention, he might be one that ſaw the Spaniard at home apprehend an invaſion with greater ter-

ror than he makes it abroad; and that was a witneſs how an handful of men, neither armed, victualled, nor ordered as they ſhould be, landed, marched, and had done what they liſted, if either the ſhips had come up, or they had had any proviſions to make a hole in a wall, or to break open a gate. But though the counſel be good for ſome ſtates, and for ours at ſome times, yet the opportunities ought to be watched; and it muſt appear, that this it is which is now taken. The opportunity for ſuch ſervice I take to be, when either the enemy may receive the moſt hurt, or when he is likelieſt to attempt againſt us, if he be not impeached. The hurt that our eſtate ſhould ſeek to do him, is to intercept his treaſure, whereby we ſhall cut his ſinews, and make war upon him with his own money; and to beat, or at leaſt diſcontinue him from the ſea, whereby her majeſty ſhall be both ſecured from his invaſions, and become miſtreſs of the ſea; which is the greatneſs that the queen of an iſland ſhould moſt aſpire unto. In matter of profit, we may this journey moſt hurt him and benefit ourſelves, ſince he hath (as is agreed on by all men) more caracks to come home now, than ever any year before: beſides many good advantages which will be offered if we command the coaſt. And to give him a blow, and diſcountenance him by ſea, now is the time; when he hath declared his ambition to command the ſeas; and yet, ſo divided his fleets: ſome appointed to be ſet out, and yet ſcant in readineſs; others upon point of coming home, and not fit to defend themſelves, if either they be met at ſea, or found in harbour; and all ſo diſperſed in ſeveral places, as if at any time we might do good that way, it is now. And whether he will make war upon us, if we let him alone; let his ſolicitations, offers, and gifts to the rebels of Ireland; his beſieging and winning of Calais, and thoſe parts of France that front upon us, and his ſtrengthening himſelf by ſea by ſo many means; let theſe things (I ſay) tell us. So as if we will at any time allow the counſel of prevention to be reaſonable, we muſt now confeſs it to be opportune. But whatſoever the counſel were, I am not to be charged with it; for as I was not the contriver, nor offerer of the project, ſo if I had refuſed to join with him (that did invite me to it) I ſhould have been thought both incompatible and backward in her majeſty's ſervice. I ſay not this for that I think the action ſuch, as it were diſadvantage to be thought the projector of it; but I ſay, and ſay truly, that my lord admiral deviſed it, preſented it to her majeſty, and had as well the approbation of her majeſty, and the aſſent of ſuch of your lordſhips as were acquainted with it, as my promiſe to go with him. One thing (I confeſs) I above all men am to be charged withal; that is, that when her majeſty's, the city of London's, and the ſtates of the Low Countries charge was paſt, the men levied, and marching to the rendezvous, I could not ſee how, with her majeſty's honour and ſafety, the journey might be broken. Wherein, although I ſhould be carried with paſſion, yet I pray your lordſhips conſider, who almoſt, that had been in my caſe, named to ſuch an action, voiced throughout Chriſtendom, and engaged in it as much as I was worth; and being the inſtrument of drawing more voluntary men of their own charge, than ever was ſeen theſe many years; who (I ſay) would not have been ſo affected? But far be it from me, in any action of this importance, to weigh myſelf, or my particular fortunes. I muſt beſeech your lordſhips to remember, that I was from time to time warranted by all your opinions, delivered both amongſt yourſelves, and to her majeſty, which tieth you all to allow the counſel; and that being granted, your lordſhips will call that zeal which maketh a man conſtant in a good counſel, that would be paſſion in an evil or a doubtful. I confeſs, her majeſty offered us recompence for all our charges and loſſes: but (my lords) I pray your lordſhips conſider, how many things I ſhould have ſold at once for money? I will leave mine own reputation as too ſmall a matter to be mentioned: But I ſhould have ſold the honour of her majeſty, the ſafety of the ſtate, the contentment of her confederates, the fortune and hope of many of my poor countrymen, and the poſſibility of giving a blow to that enemy that ought ever to be hateful to all true Engliſh hearts. I ſhould have ſold all this for private profit. Therefore, though I aſk pardon of her majeſty, and pray your lordſhips to mediate it for me, that I was carried

ried by this zeal ſo faſt, that I forgot thoſe reverend forms which I ſhould have uſed; yet I had rather have my heart out of my body, than this zeal out of my heart.

And now, as I have laid before your lordſhips my paſt carriage, and entering into this action, ſo I beſeech your lordſhips give me leave to prepare you to a favourable conſtruction of that which I ſhall do hereafter: in which ſuit I am reſolved neither to plead the hazarding of life, nor ſpending of my ſubſtance in a publick ſervice; to the end that I might find your lordſhips (who are publick perſons) more favourable judges: but will confeſs, that I receive ſo much favour and honour by this truſt and employment, as when I have done all I can, I ſhall ſtill be behind-hand. This ſuit only I make, that your lordſhips will neither have too great an expectation of our actions, nor too little; leſt all we do ſeem either nothing, or to be done by chance. I know we muſt be tied to do no more than ſhall be for her majeſty's ſervice, nor no leſs. In which ſtrait way, though it be hard for ſo weak a man as myſelf to walk upright; yet the example of our raw ſoldiers may comfort an unſufficient General: for they, till they grow perfect in all their orders and motions, are ſo afraid to be out, and with ſuch a continual heedfulneſs obſerve both themſelves and thoſe that are near them, that they do keep almoſt as good order at the firſt as ever after. I am ſure I am as diſtruſtful of myſelf as they. And becauſe I have more ſenſe of duty, I ſhall be more induſtrious. For ſea-ſervice, the judgment of my honourable companion ſhall be my compaſs. And for land, his aſſent, and the advice of thoſe her majeſty hath named as counſellors at war, ſhall be my warranties. It will be honour to her majeſty, and a great aſſurance to her ſtate, if we either bring home wealth, or give the king of Spain a blow by ſea. But to have made a continual diverſion, and to have left as it were a thorn ſticking in his foot, had been a work worthy of ſuch a queen, and of ſuch a preparation: for then her majeſty ſhould have heard no more of his intentions for Ireland, and attempts upon the coaſt of France, or his drawing of ſhips or galleys into theſe narrow ſeas; but ſhould at once have delivered all Chriſtendom from his fearful uſurpation. Wherein, as ſhe had been great in fame for ſuch a general preſervation; ſo ſhe had been as great in power in making all the enemies of Spain in Chriſtendom to depend upon her. She ſhould be head of the party; ſhe only might be ſaid to make the wars with Spain, becauſe ſhe made them to purpoſe; and they all but as her aſſiſtants and dependants. And laſtly, as the end of the wars is peace, ſo ſhe might have had peace when ſhe would, and with what conditions ſhe would, and have included or left out whom ſhe would. For ſhe only, by this courſe, ſhould force him to wiſh for peace, and ſhe had the means in her hands to make the conditions. And as eaſy it had been to have done this, as to have performed leſſer ſervices. The objections againſt this will be hazard and charge. Hazard, to hold any thing of his that is ſo mighty a king; and charge, to ſend ſuch ſupplies from time to time as will be needful. For hazard, it is not the hazard of the ſtate or the whole, as are the hazards of a defenſive war, whenſoever we are enforced to fight; but it is only a hazard of ſome few, and ſuch commanders, as ſhall be ſet out for ſuch a ſervice. And thoſe alſo that ſhall be ſo hazarded, ſhall be in leſs danger than if they were put into any frontier places of France or of the Low-Countries. For they ſhould not be left in any part of the main or continent of Spain or Portugal, where the enemy might bring an army to attempt them (though I doubt not, but after he had once tried what it were to beſiege two or three thouſand Engliſh in a place well fortified, and where they had a port open, he would grow quickly weary of thoſe attempts;) but they ſhould be ſo lodged, as the ſeat and ſtrength of the place ſhould warrant their ſafety: ſo that to pull her majeſty's men out of it, ſhould be a harder taſk than to conquer any country that ſtands on firm land by him; and to let the Engliſh quietly poſſeſs it, ſhould ſo much prejudice him, as he were not able to endure it. And for charge, there need not ſo much be expended, but that it might eaſily be borne. And the place being well choſen, and the war well conducted, in a ſhort time there would not only ariſe enough to pay the charge, but great profit to her majeſty, and wealth to

our country, would grow from the place that ſhould be held: for in a ſhort time a great part of the golden Indian ſtream might be turned from Spain to England, and her majeſty be made to give law to all the world by ſea, without her charge. Beſides, this fearful enemy, which is now a terror to all Chriſtendom, ſhould be ſo weakened in ſtrength, reputation, and purſe, as her majeſty ſhould for ever after have an eaſy enemy of him. It may be your lordſhips will deſire to know the place that ſhould be attempted, the means firſt to take it, then to hold it; the commodity or advantage that might grow to this eſtate by it: but that, with your lordſhips leave, ſhall be reſerved till my next. This is only to beſeech you, for our dear ſovereign's ſake, for the glory and, welfare of her and her eſtate, that you will think upon this general propoſition: and, if your lordſhips find it reaſonable, that you will move it to the queen; by whom if I be commanded to ſet down the hypotheſis, or to deſcend unto particulars, I will offer my project, with this condition, that if I adviſe any thing that the council of war ſhall think dangerous, it may be rejected; or if myſelf be actor in any thing belonging to this project, wherein her majeſty receives diſhonour, that I may anſwer it with my life. And yet your lordſhips know, I am matched with thoſe in whom I have no particular intereſt; but I muſt attribute their aſſenting to me to my good hap to take the better part. In my lord, with whom I am joined, I find ſo much honour and ſervice, as I doubt not but our unity in affection will make an unity in counſel, action, and government. I have troubled your lordſhips with a tedious letter, begun in a day of leiſure, and finiſhed in the midſt of our troubleſome buſineſs. I pray your lordſhips pardon the errors in it, and keep ſo honourable an opinion of me, as I be not condemned by you upon any complaints, advertiſements, or reports, till I have given anſwer to them. For as the nature of my place is ſubject to envy and detraction; ſo a little body full of ſharp humours is hardlieſt kept in temper. And all the diſcontented humours of an army do make their greateſt quarrel to him that commands the army; not ſo much for his faults, as for becauſe he bridles theirs. And ſo commending your good lordſhips to God's divine protection, I reſt at your lordſhips commandment,

ROBERT ESSEX.

XXXII. To my Lord of Essex, from Mr. Bacon, Oct. 4. 1596.

My ſingular good Lord,

I Will no longer diſſever part of that, which I meant to have ſaid to your lordſhip at Barn-Elms, from the *exordium* which I then made; whereunto I will only add this, that I humbly deſire your lordſhip, before you give acceſs to my poor advice, to look about, even jealouſly a little if you will, and to conſider; firſt, whether I have not reaſon to think, that your fortune comprehendeth mine? Next, whether I ſhift my counſel, and do not *conſtare mihi?* for I am perſuaded, there are ſome would give you the ſame counſel now which I ſhall, but that they ſhould derogate from that which they have ſaid heretofore. Thirdly, whether you have taken hurt, at any time, by my careful and devoted counſel; for although I remember well your lordſhip once told me, that you having ſubmitted upon my well-meant motion at Nonſuch (the place where you renewed a treaty with her majeſty of obſequious kindneſs) ſhe had taken advantage of it; yet, I ſuppoſe, you do ſince believe, that it did much atemper a cold malignant humour then growing upon her majeſty toward your lordſhip, and hath done you good in conſequence. And for my being againſt it, now lately, that you ſhould not eſtrange yourſelf, although I give place to none in true gratulation; yet neither do I repent me of ſafe counſel; neither do I judge of the whole play by the firſt act. But whether I counſel you the beſt, or for the beſt, duty bindeth me to offer to you my wiſhes. I ſaid to your lordſhip laſt time, *Martha, Martha, attendis ad plurima, unum ſufficit*; win the queen:

queen: if this be not the beginning of any other courſe, I ſee no end. And I will not now ſpeak of favour of affection, but of other correſpondence and agreeableneſs; which, whenſoever it ſhall be conjoined with the other of affection, I durſt wager my life (let them make what *proſopopoeia's* they will of her majeſty's nature) that in you ſhe will come to the queſtion of *Quid fiet homini, quem rex vult honorare?* But how is it now? A man of a nature not to be ruled, that hath the advantage of my affection, and knoweth it; of an eſtate not grounded to his greatneſs; of a popular reputation; of a military dependence. I demand, whether there can be a more dangerous image than this, repreſented to any monarch living, much more to a lady, and of her majeſty's apprehenſion? And is it not more evident than demonſtration itſelf, that whilſt this impreſſion continueth in her majeſty's breaſt, you can find no other condition, than inventions to keep your eſtate bare and low; croſſing and diſgracing your actions; extenuating and blaſting of your merit; carping with contempt at your nature and faſhions; breeding, nouriſhing, and fortifying ſuch inſtruments as are moſt factious againſt you; repulſes and ſcorns of your friends, and dependents that are true and ſtedfaſt; winning and inveigling away from you ſuch as are flexible and wavering; thruſting you into odious employments and offices to ſupplant your reputation; abuſing you and feeding you with dalliances and demonſtrations, to divert you from deſcending into the ſerious conſideration of your own caſe; yea, and percaſe venturing you in perillous and deſperate enterpriſes. Herein it may pleaſe your lordſhip to underſtand me; for I mean nothing leſs, than that theſe things ſhould be plotted and intended as in her majeſty's royal mind towards you: I know the excellency of her nature too well. But I ſay, whereſoever the formerly-deſcribed impreſſion is taken in any king's breaſt towards a ſubject, theſe other recited inconveniences muſt, of neceſſity of politic conſequence, follow; in reſpect of ſuch inſtruments as are never failing about princes: which ſpy into their humours and conceits, and ſecond them; and not only ſecond them, but in ſeconding increaſe them; yea, and many times, without their knowledge, purſue them farther than themſelves would. Your lordſhip will aſk the queſtion, wherewith the Athenians were wont to interrupt their orators, when they exaggerated their dangers; *Quid igitur agendum eſt?*

I will tell your lordſhip *quae mihi nunc in mentem veniunt*; ſuppoſing nevertheleſs, that yourſelf, out of your own wiſdom upon the caſe, with this plainneſs and liberty repreſented to you, will find out better expedients and remedies. I wiſh a cure applied to every of the five former impreſſions, which I will take not in order, but as I think they are of weight.

For the removing the impreſſion of your nature to be *opiniaſtre* and not rulable: firſt and above all things I wiſh, that all matters paſt, which cannot be revoked, your lordſhip would turn altogether upon inſatisfaction, and not upon your nature or proper diſpoſition. This ſtring you cannot, upon every apt occaſion, harp upon too much. Next, whereas I have noted you to fly and avoid (in ſome reſpect juſtly) the reſemblance or imitation of my lord of Leiceſter, and my lord chancellor Hatton; yet I am perſuaded (howſoever I wiſh your lordſhip as diſtant as you are from them in points of favour, integrity, magnanimity, and merit) that it will do you much good between the queen and you, to alledge them (as oft as you find occaſion) for authors and patterns: for I do not know a readier mean to make her majeſty think you are in your right way. Thirdly, when at any time your lordſhip upon occaſion happen in ſpeeches to do her majeſty right (for there is no ſuch matter as flattery amongſt you all) I fear you handle it *magis in ſpeciem adornatis verbis, quam ut ſentire videaris.* So that a man may read formality in your countenance; whereas your lordſhip ſhould do it familiarly, *et oratione fida.* Fourthly, your lordſhip ſhould never be without ſome particulars a-foot, which you ſhould ſeem to purſue with earneſtneſs and affection; and then let them fall, upon taking knowledge of her majeſty's oppoſition and diſlike. Of which, the weightieſt ſort may be, if your lordſhip offer to labour, in the behalf of ſome that you favour, for ſome of the places now void; chuſing ſuch a ſubject as you think her majeſty is like to op-

poſe unto: and if you will ſay that this is *conjunctum cum aliena injuria*, I will not anſwer, *Haec non aliter conſtabunt*; but I ſay, commendation from ſo good a mouth doth not hurt a man, though you prevail not. A leſs weighty ſort of particulars may be the pretence of ſome journeys, which at her majeſty's requeſt your lordſhip might relinquiſh; as if you would pretend a journey to ſee your living and eſtate towards Wales, or the like: for as for great foreign journeys of employment and ſervice, it ſtandeth not with your gravity to play or ſtratagem with them. And the lighteſt ſort of particulars, which yet are not to be neglected, are in your habits, apparel, wearings, geſtures and the like.

The impreſſion of greateſt prejudice next, is that of a military dependance: wherein I cannot ſufficiently wonder at your lordſhip's courſe, that you ſay, the wars are your occupation, and go on in that courſe; whereas, if I might have adviſed your lordſhip, you ſhould have left that perſon at Plymouth, more than when in counſel, or in commending fit perſons for ſervice for wars, where it had been in ſeaſon. And here, my lord, I pray miſtake me not: I am not to play now the part of a gown-man, that would frame you beſt to mine own turn. I know what I owe you. I am infinitely glad of this laſt journey, now it is paſt; the rather, becauſe you may make ſo honourable a full point for a time. You have property good enough in that greatneſs: There is none can, of many years, aſcend near you in competition. Beſides, the diſpoſing of the places and affairs both, concerning the wars (you encreaſing in other greatneſs) will of themſelves flow to you; which will preſerve that dependance in full meaſure. It is a thing that of all things I would have you retain, the times conſidered, and the neceſſity of the ſervice; for other reaſon I know none: yet, I ſay, keep it in ſubſtance, but aboliſh it in ſhews to the queen; for her majeſty loveth peace. Next, ſhe loveth not charge. Thirdly, that kind of dependance maketh a ſuſpected greatneſs. Therefore, *quod inſtat agamus*. Let that be a ſleeping honour a while, and cure the queen's mind in that point. Therefore, again, whereas I heard your lordſhip deſigning to your ſelf the earl marſhal's place, or the place of maſter of the ordnance; I did not in my mind ſo well like of either, becauſe of their affinity with a martial greatneſs. But of the places now void, in my judgment and diſcretion, I would name you to the place of lord privy ſeal. For firſt, it is the third perſon of the great officers of the crown. Next, it hath a kind of ſuper-intendence over the ſecretary. It hath alſo an affinity with the court of wards, in regard of the fees from the liveries: and it is a fine honour, quiet place, and worth a thouſand pounds by year: and my lord admiral's father had it, who was a martial man; and it fits a favourite to carry her majeſty's image in ſeal, who beareth it beſt expreſſed in heart. But my chief reaſon is, that which I firſt alleged, to divert her majeſty from this impreſſion of a martial greatneſs. In concurrence whereof, if your lordſhip ſhall not remit any thing of your former diligence at the Star-chamber; if you ſhall continue ſuch intelligences as are worth the cheriſhing; if you ſhall pretend to be as bookiſh and contemplative as ever you were: all theſe courſes have both their advantages and uſes in themſelves otherwiſe, and ſerve exceeding aptly to this purpoſe. Whereunto I add one expedient more, ſtronger than all the reſt; and, for my own confident opinion, void of any prejudice or danger of diminution of your greatneſs; and that is, the bringing in of ſome martial man to be of the council; dealing directly with her majeſty in it, as for her ſervice, and your better aſſiſtance; chuſing nevertheleſs ſome perſon that may be known, not to come in againſt you, by any former diviſion. I judge the fitteſt to be my lord Mountjoy, or my lord Willoughby. And if your lordſhip ſee deeplier into it than I do, that you would not have it done in effect; yet in my opinion, you may ſerve your turn by the pretence of it, and ſtay it nevertheleſs.

The third impreſſion is of a popular reputation; which, becauſe it is a thing good in itſelf, being obtained as your lordſhip obtaineth it, that is, *bonis artibus*; and beſides, well governed, is one of the beſt flowers of your greatneſs both preſent and to come; it would be handled tenderly. The only way is to quench

it *verbis* and not *rebus*. And therefore to take all occaſions to the queen, to ſpeak againſt popularity and popular courſes vehemently; and to tax it in all others: but, nevertheleſs, to go on in your honourable common-wealth courſes as you do. And therefore, I will not adviſe you to cure this, by dealing in monopolies, or any oppreſſions: Only, if in parliament your lordſhip be forward for treaſure, in reſpect of the wars, it becometh your perſon well; and if her majeſty object popularity to you at any time, I would ſay to her, a parliament will ſhew that; and ſo feed her with expectation.

The fourth impreſſion, of the inequality between your eſtate of means, and your greatneſs of reſpects, is not to be neglected. For believe it, my lord, that till her majeſty find you careful of your eſtate, ſhe will not only think you more like to continue chargeable to her, but alſo have a conceit that you have higher imaginations. The remedies are, firſt, to profeſs it in all ſpeeches to her: Next, in ſuch ſuits wherein both honour, gift, and profit may be taken, to communicate freely with her majeſty, by way of inducing her to grant, that it will be this benefit to you. Laſtly, to be plain with your lordſhip (for the gentlemen are ſuch as I am beholden to) nothing can make the queen, or the world think ſo much that you are come to a provident care of your eſtate, as the altering of ſome of your officers; who though they be as true to you as one hand to the other; yet *opinio veritate major*: But if, in reſpect of the bonds they may be entered into for your lordſhip, you cannot ſo well diſmiſs yourſelf of them, this cannot be done but with time.

For the fifth and laſt, which is of the advantage of a favourite; as ſever'd from the reſt, it cannot hurt; ſo joined with them, it maketh her majeſty more fearful and ſhadowy, as not knowing her own ſtrength. The only remedy to this, is to give way to ſome other favourite, as in particular you ſhall find her majeſty inclined; ſo as the ſubject hath no ill, nor dangerous aſpect towards yourſelf. For otherwiſe, whoſoever ſhall tell me, that you may not have ſingular uſe of a favourite at your devotion, I will ſay he underſtandeth not the queen's affection, nor your lordſhip's condition. And ſo I reſt.

October 4. 1596.

XXXIII. To my lord of Essex.

It may pleaſe your good Lordſhip,

I Pray God her majeſty's weighing be not like the weight of a balance; *gravia deorſum, levia ſurſum.* But I am as far from being altered in devotion towards her, as I am from diſtruſt that ſhe will be altered in opinion towards me, when ſhe knoweth me better. For myſelf, I have loſt ſome opinion, ſome time, and ſome means; this is my account: but then for opinion, it is a blaſt that goeth and cometh; for time, it is true, it goeth and cometh not; but yet I have learned that it may be redeemed.

For means, I value that moſt; and the rather, becauſe I am purpoſed, not to follow the practice of the law (if her majeſty command me in any particular, I ſhall be ready to do her willing ſervice:) and my reaſon is only, becauſe it drinketh too much time, which I have dedicated to better purpoſes. But even for that point of eſtate and means, I partly lean to Thales's opinion, That a philoſopher may be rich if he will. Thus your lordſhip ſeeth how I comfort myſelf; to the increaſe whereof I would fain pleaſe myſelf to believe that to be true which my lord treaſurer writeth; which is, that it is more than a philoſopher morally can digeſt. But without any ſuch high conceit, I eſteem it like the pulling out of an aking tooth, which, I remember, when I was a child, and had little philoſophy, I was glad of when it was done. For your lordſhip, I do think myſelf more beholden to you than to any man: and I ſay, I reckon myſelf as a common (not popular, but common;) and as much as is

lawful to be incloſed of a common, ſo much your lordſhip ſhall be ſure to have.

Your Lordſhip's, to obey your honourable commands, more ſettled than ever.

XXXIV. To my lord of Essex.

My ſingular good Lord,

YOur lordſhip's ſo honourable minding my poor fortune the laſt year, in the very entrance into that great action (which is a time of leſs leiſure) and in ſo liberal an allowance of your care, as to write three letters to ſtir me up friends in your abſence, doth, after a ſort, warrant me not to object to myſelf your preſent quantity of affairs, whereby to ſilence myſelf from petition of the like favour. I brake with your lordſhip myſelf at the Tower; and I take it my brother hath ſince renewed the ſame motion, touching a fortune I was in thought to attempt, *in genere oeconomico. In genere politico*, certain croſs winds have blown contrary. My ſuit to your lordſhip is for your ſeveral letters to be left with me dormant, to the gentlewoman, and either of her parents: Whereln I do not doubt, but as the beams of your favour have often diſſolved the coldneſs of my fortune; ſo in this argument your lordſhip will do the like with your pen. My deſire is alſo, that your lordſhip would vouchſafe unto me, as out of your care, a general letter to my lord keeper, for his lordſhip's holding me from you recommended; both in the courſe of my practice, and in the courſe of my employment in her majeſty's ſervice: wherein, if your Lordſhip ſhall in any *antitheſis* or relation affirm, that his lordſhip ſhall have no leſs fruit of me than of any other whom he may cheriſh, I hope your lordſhip ſhall engage yourſelf for no impoſſibility. Laſtly and chiefly, I know not whether I ſhall attain to ſee your lordſhip before your noble journey; for ceremonies are things infinitely inferiour to my love and to my zeal. This let me, with your allowance, ſay unto you by pen. It is true, that in my well-meaning advices, out of my love to your lordſhip, and perhaps out of the ſtate of mine own mind, I have ſometimes perſuaded a courſe diſſering; *ac tibi pro tutis inſignia facta placebunt:* be it ſo, yet remember, that the ſigning of your name is nothing, unleſs it be to ſome good patent or charter, whereby your country may be endowed with good and benefit. Which I ſpeak, both to move you to preſerve your perſon for farther merit and ſervice of her majeſty and your country, and likewiſe to refer this action to the ſame end. And ſo, in moſt true and fervent prayers, I commend your lordſhip, and your work in hand, to the preſervation and conduct of the divine Majeſty; ſo much the more watchful, as theſe actions do more manifeſtly in ſhew, though alike in truth, depend upon his divine providence.

XXXV. To Sir John Stanhope.

SIR,

YOur good promiſes ſleep, which it may ſeem now no time to awake. But that I do not find that any general kalendar of obſervation of time ſerveth for the court: and beſides, if that be done, which I hope by this time is done; and that other matters ſhall be done, which we wiſh may be done, I hope to my poor matter, the one of theſe great matters may clear the way, and the other give the occaſion. And though my lord treaſurer be abſent, whoſe health nevertheleſs will enable him to be ſooner at court than is expected; eſpecially if this hard weather (too hard to continue) ſhall relent; yet we abroad ſay, his lordſhip's ſpirit may be there, though his perſon be away. Once I take for a good ground, that her majeſty's buſineſs ought to keep neither vacation nor holy-day, either in the execution, or in the care and preparation of thoſe whom her majeſty calleth and uſeth: and therefore I would think no time

barred

barred from remembring that, with ſuch diſcretion and reſpect as appertaineth. The concluſion ſhall be, to put you in mind to maintain that which you have kindly begun, according to the reliance I have upon the ſincerity of your affection, and the ſoundneſs of your judgment. And ſo I commend you to God's preſervation.

XXXVI. To my lord of Essex.

My ſingular good Lord,

THE meſſage it pleaſed your lordſhip to ſend me, was to me delivered doubtfully. Whether your lordſhip ſaid you would ſpeak with me at the Star-chamber, or with Mr. Philip. If with me, it is needleſs; for gratitude impoſeth upon me ſatisfaction: if with Mr. Philip, it will be too late; becauſe ſomewhat muſt (perchance) be done that day. This doubt not ſolved, maketh me write again: the rather, becauſe I did liberally, but yet privately, affirm your lordſhip would write; which if I make not good, it may be a diſcouragement. Your lordſhip's letter, though it have the ſubject of honour and juſtice, yet it ſhall have the ſecrecy of a thing done upon affection. I ſhall ever in a firm duty ſubmit my occaſions, though great, to your lordſhip's reſpects, though ſmall: and this is my reſolution, that when your lordſhip doth for me, you ſhall increaſe my obligation; when you refuſe to do for me, you ſhall increaſe my merit. So leaving the matter wholly to your lordſhip's pleaſure, I commend your lordſhip to the preſervation of the divine Majeſty.

From Gray's-Inn.

Your Lordſhip's ever moſt humbly bounden.

XXXVII. To my lord of Essex.

My ſingular good Lord,

I May perceive, by my lord keeper, that your lordſhip, as the time ſerved, ſignified unto him an intention to confer with his lordſhip at better opportunity; which, in regard of your ſeveral and weighty occaſions, I have thought good to put your lordſhip in remembrance of; that now at his coming to the court it may be executed; deſiring your good lordſhip, nevertheleſs, not to conceive out of this my diligence in ſoliciting this matter, that I am either much in appetite, or much in hope. For as for appetite, the waters of Parnaſſus are not like the waters of the Spaw, that give a ſtomach; but rather they quench appetite and deſires. And for hope, how can he hope much, that can allege no other reaſon than the reaſon of an evil debtor, who will perſuade his creditor to lend him new ſums, and to enter farther in with him to make him ſatisfy the old? and to her majeſty no other reaſon, but the reaſon of a waterman; I am her firſt man of thoſe who ſerve in counſel of law? And ſo I commit your lordſhip to God's beſt preſervation.

XXXVIII. To my lord of Essex.

Moſt honourable, and my ſingular good Lord,

I Cannot but importune your lordſhip, with thanks for your lordſhip's remembring my name to my lord keeper; which being done in ſuch an article of time, could not but be exceedingly enriched, both in demonſtration and effect; which I did well diſcern by the manner of expreſſing thereof by his lordſhip again to me. This accumulating of your lordſhip's favours upon me hitherto, worketh only this effect; that it raiſeth my mind to aſpire to be found worthy of them, and likewiſe to merit and ſerve you for them. But whether I ſhall be able to pay my vows or no, I muſt leave that to God, who

hath them *in depoſito*: whom alſo I moſt inſtantly beſeech to give you fruit of your actions, beyond that your heart can propound: *Nam Deus major eſt corde*: Even to the environing of his benedictions, I recommend your lordſhip.

XXXIX. To the QUEEN.

It may pleaſe your Majeſty,

IT were great ſimplicity in me to look for better, than that your Majeſty ſhould caſt away my letter, as you have done me; were it not that it is poſſible your Majeſty will think to find ſomewhat in it, whereupon your diſpleaſure may take hold; and ſo indignation may obtain that of you which favour could not. Neither might I in reaſon preſume to offer unto your Majeſty dead lines, myſelf being excluded as I am; were it not upon this only argument or ſubject; namely, to clear myſelf in point of duty. Duty, though my ſtate lie buried in the ſands, and my favours be caſt upon the waters, and my honours be committed to the wind, yet ſtandeth ſurely built upon the rock, and hath been, and ever ſhall be, unforced and unattempted. And therefore, ſince the world, out of error, and your Majeſty, I fear, out of art, is pleaſed to put upon me, that I have ſo much as any election or will in this my abſence from attendance, I cannot but leave this proteſtation with your Majeſty; that I am, and have been merely a patient, and take myſelf only to obey and execute your Majeſty's will. And indeed, Madam, I had never thought it poſſible that your Majeſty could have ſo diſintereſſed yourſelf of me; nor that you had been ſo perfect in the art of forgetting; nor that after a quinteſſence of wormwood, your Majeſty would have taken ſo large a draught of poppy, as to have paſſed ſo many [a] ſummers without all feeling of my ſufferings. But the only comfort I have is this, that I know your Majeſty taketh delight and contentment in executing this diſgrace upon me. And ſince your Majeſty can find no other uſe of me, I am glad yet I can ſerve for that. Thus making my moſt humble petition to your Majeſty, that in juſtice (howſoever you may by ſtrangeneſs untie, or by violence cut aſunder all other knots) your Majeſty would not touch me in that which is indiſſoluble; that is, point of duty; and that your Majeſty will pardon this my unwarranted preſumption of writing, being to ſuch an end: I ceaſe in all humbleneſs;

Written by Mr. Bacon, for my lord of Eſſex.

Your Majeſty's poor, and never ſo unworthy ſervant,

ESSEX.

XL. To Sir ROBERT CECIL.

SIR,

I Forbear not to put in paper, as much as I thought to have ſpoken to your honour to-day, if I could have ſtayed: knowing, that if your honour ſhould make other uſe of it, than is due to good meaning, and than I am perſuaded you will; yet to perſons of judgment, and that know me otherwiſe, it will rather appear (as it is) a preciſe honeſty, and this ſame *ſuum cuique tribuere*, than any hollowneſs to any. It is my luck ſtill to be a-kin to ſuch things as I neither like in nature, nor would willingly meet with in my courſe; but yet cannot avoid, without ſhew of baſe timorouſneſs, or elſe of unkind or ſuſpicious ſtrangeneſs. .....

[Some *hiatus* in the copy.]

And I am of one ſpirit ſtill. I ever liked the Galeniſts, that deal with good compoſitions; and not the Paracelſians, that deal with theſe fine ſeparations: and in muſick, I ever loved eaſy airs, that go full all the

[a] This ſhews this letter was wrote before the earl of Eſſex had been reconciled to the queen; and our author not having been called or adviſed with for ſome year and a half before the earl's going to Ireland, determines the date at lateſt to the beginning of 1598.

parts together; and not theſe ſtrange points of accord and diſcord. This I write not, I aſſure your honour, officiouſly; except it be according to Tully's *Offices*; that is, honeſtly and morally. For though, I thank God, I account upon the proceeding in the queen's ſervice, or not proceeding, both ways; and therefore neither mean to fawn nor retire; yet I naturally deſire good opinion with any perſon which for fortune or ſpirit is to be regarded; much more with a ſecretary of the queen's, and a couſin-german, and one with whom I have ever thought myſelf to have ſome ſympathy of nature, though accidents have not ſuffered it to appear. Thus not doubting of your honourable interpretation, and uſage of that I have written, I commend you to the divine preſervation.

From Gray's-Inn.

XLI. To Sir Robert Cecil.

SIR,

YOUR honour knoweth, my manner is, though it be not the wiſeſt way, yet taking it for the honeſteſt, to do as Alexander did by his phyſician, in drinking the medicine, and delivering the advertiſement of ſuſpicion: ſo I truſt on, and yet do not ſmother what I hear. I do aſſure you, Sir, that by a wiſe friend of mine, and not factious towards your honour, I was told with aſſeveration, that your honour was bought by Mr. Coventry for two thouſand angels; and that you wrought in a contrary ſpirit to my lord your father. And he ſaid farther, that from your ſervants, from your lady, from ſome counſellors that have obſerved you in my buſineſs, he knew you wrought underhand againſt me: The truth of which tale I do not believe. You know the event will ſhew, and God will right. But as I reject this report (though the ſtrangeneſs of my caſe might make me credulous) ſo I admit a conceit, that the laſt meſſenger my lord and yourſelf uſed, dealt ill with your honours; and that word (ſpeculation) which was in the queen's mouth, rebounded from him as a commendation: for I am not ignorant of thoſe little arts. Therefore, I pray, truſt not him again in my matter. This was much to write; but I think my fortune will ſet me at liberty, who am weary of aſſerviling myſelf to every man's charity. Thus I, etc.

XLII. To Foulk Grevil.

SIR,

I Underſtand of your pains to have viſited me, for which I thank you. My matter is an endleſs queſtion. I aſſure you I had ſaid, *Requieſce, anima mea:* but I now am otherwiſe put to my pſalter; *Nolite confidere.* I dare go no farther. Her majeſty had, by ſet ſpeech, more than once aſſured me of her intention to call me to her ſervice; which I could not underſtand but of the place I had been named to. And now, whether *invidus homo hoc fecit*; or whether my matter muſt be an appendix to my lord of Eſſex ſuit; or whether her majeſty, pretending to prove my ability, meaneth but to take advantage of ſome errors, which, like enough, at one time or other I may commit; or what it is; but her majeſty is not ready to diſpatch it. And what though the maſter of the Rolls, and my lord of Eſſex, and yourſelf, and others, think my caſe without doubt; yet in the mean time I have a hard condition to ſtand ſo, that whatſoever ſervice I do to her majeſty, it ſhall be thought but to be *ſervitium viſcatum*, lime-twigs and fetches to place myſelf; and ſo I ſhall have envy, not thanks. This is a courſe to quench all good ſpirits, and to corrupt every man's nature; which will, I fear, much hurt her majeſty's ſervice in the end. I have been like a piece of ſtuff be-ſpoken in the ſhop; and if her majeſty will not take me, it may be the ſelling by parcels will be more gainful. For to be, as I told you, like a child following a bird, which when he is neareſt flieth away,

and lighteth a little before, and then the child after it again, and ſo *in infinitum*; I am weary of it, as alſo of wearying my good friends; of whom, nevertheleſs, I hope in one courſe or other gratefully to deſerve. And ſo, not forgetting your buſineſs, I leave to trouble you with this idle letter, being but *juſta et moderata querimonia:* For indeed, I do confeſs, *primus amor* will not eaſily be caſt off. And thus again I commend me to you.

XLIII. To my lord of Essex.

It may pleaſe your good Lordſhip,

I Am very ſorry her majeſty ſhould take my motion to travel in offence. But ſurely, under her majeſty's royal correction, it is ſuch an offence as it ſhould be an offence to the ſun, when a man, to avoid the ſcorching heat thereof, flieth into the ſhade. And your lordſhip may eaſily think, that having now theſe twenty years (for ſo long it is, and more, ſince I went with [a] Sir Amyas Paulet into France, from her majeſty's royal hand) made her majeſty's ſervice the ſcope of my life; I ſhall never find a greater grief than this, *relinquere amorem primum.* But ſince, *principia actionum ſunt tantum in noſtra poteſtate,* I hope her majeſty of her clemency, yea and juſtice, will pardon me, and not force me to pine here with melancholy. For though mine heart be good, yet mine eyes will be ſore; ſo as I ſhall have no pleaſure to look abroad: and if I ſhould otherwiſe be affected, her majeſty in her wiſdom will but think me an inpudent man, that would face out a diſgrace. Therefore, as I have ever found you my good lord and true friend, ſo I pray open the matter ſo to her majeſty, as ſhe may diſcern the neceſſity of it, without adding hard conceit to her rejection; of which, I am ſure, the latter I never deſerved. Thus, etc.

[a] This letter was therefore wrote about the year 1598.

XLIV. To Sir Robert Cecil, at his being in France.

It may pleaſe your honourable Lordſhip,

I Know you will pardon this my obſervance, in writing to you, empty of matter, but out of the fulneſs of my love. I am ſorry that as your time of abſence is prolonged, above that was eſteemed at your lordſhip's ſetting forth; ſo now, upon this laſt advertiſement received from you, there groweth an opinion amongſt better than the vulgar, that the difficulties alſo of your negotiation are increaſed. But becauſe I know, the gravity of your nature to be not to hope lightly, it maketh me to deſpair the leſs. For you are *natus ad ardua:* and the indiſpoſition of the ſubject may honour the ſkill of the workman. Sure I am, judgment and diligence ſhall not want in your lordſhip's ſelf: but this was not my purpoſe; being only to ſignify unto your lordſhip my continual and inceſſant love towards you, thirſting after your return, for many reſpects. So I commend you ever to the good preſervation of the divine Majeſty.

Grays-Inn. 1598.

At your honour's commandment ever and particularly.

XLV. To Sir Robert Cecil.

My ſingular good Lord,

THE argument of my letters to your lordſhip rather increaſeth than ſpendeth; it being only the deſire I have to ſalute you; which by your abſence is more augmented than abated. For me to write your lordſhip occurrences, either of Scotiſh brags, or Iriſh plaints, or Spaniſh ruffling, or Low-Country ſtates, were (beſides that it is *alienum quiddam* from mine own humour) to forget to whom I write; ſave that you, that know true advertiſements, ſometimes deſire and delight to hear common reports; as we that know but com-

mon

mon reports, deſire to hear the truth. But to leave ſuch as write to your fortunes, I write to yourſelf, in regard of my love to you; you being as near to me in heart's blood, as in blood of deſcent. This day I had the contentment to ſee your [a] father, upon occaſion: and methought his lordſhip's countenance was not decayed, nor his cough vehement; but his voice was as faint all the while as at firſt. Thus wiſhing your lordſhip a happy and ſpeedy return, I commend you to the divine Majeſty.

[a] This ſeems to be written 1598, the time of the lord Burghley's laſt ſickneſs.

XLVI. A Letter of advice to the earl of ESSEX, to take upon him the care of Iriſh cauſes, when Mr. Secretary CECIL was in France, 1598.

My ſingular good Lord,

I Do write, becauſe I had no time fully to expreſs my conceit to your lordſhip touching Iriſh affairs, conſidering them as they may concern your lordſhip; knowing that you will conſider them as they may concern the ſtate. That it is one of the apteſt particulars that hath come, or can come upon the ſtage for your lordſhip to purchaſe honour upon, I am moved to think for three reaſons: Becauſe it is ingenerate, in your houſe, in reſpect of my lord your father's noble attempts: becauſe of all the actions of ſtate on foot at this time, the labour reſteth moſt in that particular; and becauſe the world will make a kind of compariſon, between thoſe that ſet it out of frame, and thoſe that bring it into frame: which kind of honour giveth the quickeſt kind of reflection. The transferring this honour upon yourſelf conſiſteth in two points: the one, if the principal perſons employ'd come in by you and depend upon you; the other, if your lordſhip declare yourſelf, and profeſs to undertake a care of that kingdom. For the perſons, it falleth out well that your lordſhip hath had no intereſt in the perſons of imputation: for neither Sir William Fitzwilliams, nor Sir John Norrice, was yours. Sir William Ruſſel was conceived yours, but was curbed. Sir Coniers Clifford (as I conceive it) dependeth on you, who is ſaid to do well. And if my lord of Ormond, in this interim, doth accommodate things well (as it is ſaid he doth) I take it he hath always had good underſtanding with your lordſhip: ſo as all things hitherto are not only whole and entire, but of favourable aſpect towards your lordſhip, if hereafter you chuſe well: wherein in your wiſdom you will remember there is a great difference in choice of the perſons, as you ſhall think the affairs to incline to compoſition or to war. Concerning the care of buſineſs, the general and popular conceit hath been, that Iriſh cauſes have been much neglected; whereby the very reputation of better care will put life into them. And I am ſure her majeſty, and my lords of the council, do not think their care diſſolved when they have choſen whom to employ: but that they will proceed in a ſpirit of ſtate, and not leave the main point to diſcretion. Then if a reſolution be taken, a conſultation muſt proceed; and the conſultation muſt be governed upon information to be had from ſuch as know the place, and matters in fact: and in taking of information I have always noted there is a ſkill and a wiſdom. But for a beginning and key to that which ſhall follow, it were good your lordſhip would have ſome large and ſerious conference with Sir William Ruſſel, Sir Richard Bingham, the earl of Thomond, and Mr. Willbraham; to know their relation of the paſt; their opinion of the preſent; and their advice for the future. But I am of opinion much more would be had of them, if your lordſhip ſhall be pleaſed ſeverally to confer; not *obiter*, but expreſſly upon ſome caveat given them to think of it before: for *bene docet qui prudenter interrogat.*

For the points of appoſing them, I am too much a ſtranger to the buſineſs to deduce them: but in a general topick, methinks the pertinent interrogations muſt be; either of the poſſibility and means of accord; or of the nature of the war; or of the reformation of abuſes; or of the joining of practice with force in the

the diſunion of the rebels. If your lordſhip doubt to put your ſickle into another's harveſt, yet conſider you have theſe advantages; firſt, time brings it to you in Mr. Secretary's abſence: next, *vis unita fortior:* thirdly, the buſineſs being mixt with matters of war, it is fitteſt for you: and laſtly, I know your lordſhip will carry it with that modeſty and reſpect towards aged dignity, and that good correſpondence towards my dear kinſman and your good friend now abroad, as no inconvenience may grow that way.

Thus have I played the ignorant ſtateſman; which I do to no body but your lordſhip; except I do it to the queen ſometimes when ſhe trains me on. But your lordſhip will accept my duty and good meaning, and ſecure me touching the privateneſs of that I write.

XLVII. A LETTER of advice to the earl of ESSEX, upon the firſt treaty with Tyrone 1598, before the earl was nominated for the charge of Ireland.

My very good Lord,

CONcerning the advertiſements, which your lordſhip imparted to me, touching the ſtate of Ireland, I hold them to be no more certain to make judgment upon, than a patient's water to a phyſician: therefore for me upon one water to make a judgment, were indeed like a fooliſh bold mountebank, or Dr. Birket: yet for willing duty's ſake, I will ſet down to your lordſhip what opinion ſprang in my mind upon that I read.

The letter from the council there, leaning to miſtruſt and diſſuade the treaty, I do not much rely on, for three cauſes. Firſt, becauſe it is always the grace, and the ſafety from blame, of ſuch a council to err in caution: whereunto add, that it may be, they, or ſome of them, are not without envy towards the perſon who is uſed in treating the accord. Next, becauſe the time of this treaty hath no ſhew of diſſimulation; for that Tyrone is now in no ſtraits: but he is more like a gameſter that will give over becauſe he is a winner, than becauſe he hath no more money in his purſe. Laſtly, I do not ſee but thoſe articles, whereupon they ground their ſuſpicion, may as well proceed out of fear, as out of falſhood. For the retaining the dependence of the Vraights, the protracting the admiſſion of a ſheriff, the refuſing to give his ſon for an hoſtage, the holding off from preſent repair to Dublin, the refuſing to go preſently to accord, without including Odonnell, and other his aſſociates, may very well come of an apprehenſion in caſe he ſhould receive hard meaſure; and not out of treachery: ſo as if the great perſon you write of be faithful, and that you have not heard ſome preſent intelligence of preſent ſuccours from Spain (for the expectation whereof Tyrone would win time) I ſee no deep cauſe of diſtruſting this courſe of treaty, if the main conditions may be good. For her majeſty ſeemeth to me to be a winner thereby three ways: firſt, her purſe ſhall have ſome reſt: next, it will divert the foreign deſigns upon the place: thirdly, though her majeſty be like for a time to govern but *precario* in the north, and be not (as to a true command) in better ſtate there than before; yet, beſides the two reſpects of eaſe of charge, and advantage of opinion abroad, before mentioned, ſhe ſhall have time to uſe her princely policy in two points to weaken them: the one, by diviſion and diſunion of the heads: the other, by recovering and winning the people from them by juſtice; which of all other courſes is the beſt.

Now for the Athenian queſtion: you diſcourſe well; *Quid igitur agendum eſt?* I will ſhoot my fool's bolt, ſince you will have it ſo. The earl of Ormond, to be encouraged and comforted. Above all things, the garriſons to be inſtantly provided for. For opportunity maketh a thief: and if he ſhould mean never ſo well now, yet ſuch an advantage as the breaking of her majeſty's garriſons might tempt a true man.

And becauſe he may as well waver upon his own inconſtancy, as upon occaſion (and wanton variableneſs is never reſtrained but by fear) I hold it neceſ-

ſary he be menaced with a ſtrong war: not by words, but by muſters and preparations of forces here, in caſe the accord proceed not: but none to be ſent over, leſt it diſturb the treaty, and make him look to be over-run as ſoon as he hath laid away arms. And, but that your lordſhip is too eaſy to paſs in ſuch caſes from diſſimulation to verity, I think, if your lordſhip lent your reputation in this caſe; that is, to pretend that if peace go not on, and the queen mean to make, not a defenſive war as in times paſt, but a full re-conqueſt of thoſe parts of the country, you would accept the charge; I think it would help to ſettle Tyrone in his ſeeking accord, and win you a great deal of honour *gratis*.

And, that which moſt properly concerns this action, if it prove a peace, I think her majeſty ſhall do well to cure the root of the diſeaſe; and to profeſs, by a commiſſion of peaceable men, chiefly of reſpect and countenance, reformation of abuſes, extortions, and injuſtices there; and to plant a ſtronger and ſurer government than heretofore, for the eaſe and protection of the ſubject. For the removing of the ſword or government in arms from the earl of Ormond, or the ſending of a deputy (which will eclipſe it) if peace follow, I think it unſeaſonable.

Laſtly, I hold ſtill my opinion, (both for your better information, and the fuller declaration of your care, in meddling in this urgent and meriting ſervice) that your lordſhip have a ſet conference with the perſons I named in my former letter.

XLVIII. A LETTER of advice to my lord of ESSEX, immediately before his going into Ireland. 1599.

My ſingular good Lord,

[a]YOur late note of my ſilence in your occaſions hath made me ſet down theſe few wandring lines, as one that would ſay ſomewhat, and can ſay nothing, touching your lordſhip's intended charge for Ireland: which my endeavour I know your lordſhip will accept graciouſly and well; whether your lordſhip take it by the handle of the occaſion miniſtred from yourſelf, or of the affection from which it proceeds.

Your lordſhip is deſigned to a ſervice of great merit and great peril; and as the greatneſs of the peril muſt needs include a like proportion of merit; ſo the greatneſs of the merit may include no ſmall conſequence of peril, if it be not temperately governed. For all immoderate ſucceſs extinguiſheth merit, and ſtirreth up diſtaſte and envy; the aſſured forerunners of whole charges of peril. But I am at the laſt point firſt, ſome good ſpirit leading my pen to preſage to your lordſhip ſucceſs; wherein, it is true, I am not without my oracles and divinations; none of them ſuperſtitious, and yet not all natural. For firſt, looking into the courſe of God's providence in things now depending, and calling to conſideration, how great things God hath done by her majeſty and for her; I collect he hath diſpoſed of this great defection in Ireland, thereby to give an urgent occaſion to the reduction of that whole kingdom; as upon the rebellion of Deſmond there inſued the reduction of that whole province.

Next, your lordſhip goeth againſt three of the unluckieſt vices of all others, diſloyalty, ingratitude, and inſolency; which three offences, in all examples, have ſeldom their doom adjourned to the world to come.

Laſtly, he that ſhall have had the honour to know your lordſhip inwardly, as I have had, ſhall find *bona exta*, whereby he may better ground a divination of good, than upon the diſſection of a ſacrifice. But that part I leave; for it is fit for others to be confident upon you, and you to be confident upon the cauſe; the goodneſs and juſtice whereof is ſuch as can hardly be matched in any example; it being no ambitious war againſt foreigners, but a recovery of ſubjects; and that after lenity of conditions often tried; and a recovery of them not only to obedience, but to humanity and policy, from more than Indian barbariſm.

There is yet another kind of divination, familiar to matters of ſtate; being that

[a] Our Author obſerves, "I was not called or adviſed with ſome year and a half before his lordſhip's [viz. the earl of Eſſex's] going into Ireland," which explains this paſſage. *Apol.* Vol. I.

that which Demoſthenes ſo often relied upon in his time; when he ſaid, That which for the time paſt is worſt of all, is for the time to come the beſt: which is, that things go ill, not by accident, but by errors; wherein, if your lordſhip have been heretofore an awaking cenſor, yet you muſt look for no other now, but *Medice, cura teipſum:* and though you ſhall not be the happy phyſician that cometh in the declination of the diſeaſe; yet you embrace that condition which many noble ſpirits have accepted for advantage; which is, that you go upon the greater peril of your fortune, and the leſs of your reputation; and ſo the honour countervaileth the adventure; of which honour your lordſhip is in no ſmall poſſeſſion, when that her majeſty (known to be one of the moſt judicious princes in diſcerning of ſpirits that ever governed) hath made choice of you (merely out of her royal judgment; her affection inclining rather to continue your attendance) into whoſe hand, and truſt, to put the command and conduct of ſo great forces; the gathering the fruit of ſo great charge; the execution of ſo many counſels; the redeeming of the defaults of ſo many former governors; the clearing of the glory of her ſo many happy years reign, only in this part eclipſed. Nay farther, how far forth the peril of that ſtate is interlaced with the peril of England; and therefore how great the honour is, to keep and defend the approaches or avenues of this kingdom, I hear many diſcourſe; and there is a great difference, whether the tortoiſe gathereth herſelf within her ſhell hurt or unhurt.

And if any man be of opinion, that the nature of the enemy doth extenuate the honour of the ſervice, being but a rebel and a ſavage, I differ from him; for I ſee the juſteſt triumphs that the Romans in their greatneſs did obtain, and that whereof the emperors in their ſtyles took addition and denomination, were of ſuch an enemy as this; that is, people barbarous, and not reduced to civility, magnifying a kind of lawleſs liberty, and prodigal of life, hardened in body, fortified in woods and bogs, and placing both juſtice and felicity in the ſharpneſs of their ſwords; ſuch were the Germans and ancient Britons, and divers others. Upon which kind of people, whether the victory were a conqueſt, or a reconqueſt upon a rebellion or a revolt, it made no difference (that ever I could find) in honour. And therefore it is not the enriching predatory war that hath the pre-eminence in honour, elſe ſhould it be more honour to bring in a carrack of rich burden, than one of the twelve Spaniſh Apoſtles. But then this nature of people doth yield a higher point of honour, conſidered in truth, and ſubſtance, than any war can yield, which ſhould be atchieved againſt a civil enemy; if the end may be, *paciſque imponere morem*, to replant and refound the policy of that nation; to which nothing is wanting, but a juſt and civil government; which deſign, as it doth deſcend unto you from your noble father, who loſt his life in that action (though he paid tribute to nature, and not to fortune;) ſo I hope your lordſhip ſhall be as fatal a captain to this war, as Africanus was to the war of Carthage, after that both his uncle and father had loſt their lives in Spain in the ſame war. Now although it be true, that theſe things which I write (being but repreſentations unto your lordſhip, of the honour and appearance of ſucceſs of the enterpriſe) be not much to the purpoſe of any advice; yet it is that which is left to me, being no man of war, and ignorant in the particulars of eſtate. For a man may, by the eye, ſet up the white in the midſt of the but, though he be no archer. Therefore I will only add this wiſh, according to the Engliſh phraſe, which termeth a well-willing advice, a wiſh; that your lordſhip in this whole action, looking forward, would ſet down this poſition; That merit is worthier than fame; and looking back hither, would remember this text, That obedience is better than ſacrifice. For deſigning to fame and glory may make your lordſhip in the adventure of your perſon to be valiant as a private ſoldier, rather than as a general: it may make you in your commandments rather to be gracious than diſciplinary: it may make you preſs action (in reſpect of the great expectation conceived) rather haſtily than ſeaſonably and ſafely: it may make you ſeek rather to atchieve the war by force, than by intermixture of practice: it may make you (if God ſhall ſend proſperous beginnings) rather ſeek the fruition of that honour, than the

perfection of the work in hand. And for the other point, that is, the proceeding, like a good proteſtant, upon expreſs warrant, and not upon good intention, your lordſhip in your wiſdom knoweth, that as it is moſt fit for you to deſire convenient liberty of inſtructions, ſo it is no leſs fit for you to obſerve the due limits of them; remembring that the exceeding of them may not only procure, in caſe of adverſe accident, a dangerous diſavow; but alſo (in caſe of proſperous ſucceſs) be ſubject to interpretation, as if all were not referred to the right end.

Thus have I preſumed to write theſe few lines to your lordſhip, *in methodo ignorantiae*; which is, when a man ſpeaketh of any ſubject, not according to the parts of the matter, but according to the model of his own knowledge; and moſt humbly deſire your lordſhip, that the weakneſs thereof may be ſupplied in your lordſhip by a benign acceptation, as it is in me by my beſt wiſhing.

XLIX. To my lord of Essex.

My Lord,

CONceiving that your lordſhip came now up in the perſon of a good ſervant, to ſee your ſovereign miſtreſs; which kind of compliments are many times *inſtar magnorum meritorum*; and therefore that it would be hard for me to find you: I have committed to this poor paper the humble ſalutations of him that is more yours than any man's; and more yours than any man. To theſe ſalutations I add a due and joyful gratulation, confeſſing that your lordſhip, in your laſt conference with me before your journey, ſpake not in vain, God making it good; that you truſted, we ſhould ſay, *Quis putaſſet?* Which, as it is found true in a happy ſenſe, ſo I wiſh you do not find another *Quis putaſſet?* in the manner of taking this ſo great a ſervice. But I hope it is, as he ſaid, *Nubecula eſt, cito tranſibit:* and that your lordſhip's wiſdom, and obſequious circumſpection, and patience, will turn all to the beſt. So referring all to ſome time that I may attend you, I commit you to God's beſt preſervation.

L. A Letter to the earl of Essex, in offer of his ſervice when he was firſt enlarged to Eſſex-Houſe.

My Lord,

NO man can expound my doings better than your lordſhip, which makes me need to ſay the leſs; only I humbly pray you to believe, that I aſpire to the conſcience and commendation of *bonus civis*, and *bonus vir*; and that though I love ſome things better (I confeſs) than I love your lordſhip, yet I love few perſons better; both for gratitude's ſake, and for your virtues, which cannot hurt but by accident; of which my good affection it may pleaſe your lordſhip to aſſure yourſelf; and of all the true effects and offices I can yield. For as I was ever ſorry your lordſhip ſhould fly with waxen wings, doubting Icarus's fortune, ſo for the growing up of your own feathers, be they oſtriches or other kind, no man ſhall be more glad. And this is the axle-tree whereon I have turned and ſhall turn. Which having already ſignified to you by ſome near mean, having ſo fit a meſſenger for mine own letter, I thought good alſo to redouble by writing. And ſo I commend you to God's protection. From Gray's-Inn this [a] 9th of July, 1600.

[a] 19 Jul. *Cab.*

LI. An Anſwer of my lord of Essex, to the preceding Letter of Mr. Bacon.

Mr. Bacon.

I Can neither expound nor cenſure your late actions; being ignorant of all of them ſave one; and having directed my ſight inward only to examine myſelf. You do pray me to believe, that you only aſpire to the conſcience and commendation of *bonus civis*, and *bonus vir:* and I do faithfully aſſure you, that while that is your ambition (though your courſe be active, and mind contemplative) yet we ſhall both *convenire in eodem tertio*; and *convenire inter noſtipſos*. Your profeſſion of affection, and offer of good offices, are welcome to me: for anſwer to them I will ſay but this; that you have believed I have been kind to you, and you may believe that I cannot be other, either upon humour or mine own election. I am a ſtranger to all poetical conceits, or elſe I ſhould ſay ſomewhat of your poetical example. But this I muſt ſay, that I never flew with other wings than deſire to merit, and confidence in my ſovereign's favour; and when one of theſe wings failed me, I would light no where but at my ſovereign's feet, though ſhe ſuffered me to be bruiſed with my fall. And till her majeſty, that knows I was never bird of prey, finds it to agree with her will and her ſervice that my wings ſhould be imped again, I have committed myſelf to the mue. No power but my God's, and my ſovereign's, can alter this reſolution of

Your retired friend,

ESSEX.

LII. To my lord of Essex.

My Lord,

I Am glad your lordſhip hath plunged out of your own buſineſs: Wherein I muſt commend your lordſhip, as Xenophon commended the ſtate of his country, which was this, that having choſen the worſt form of government of all others, they governed the beſt in that kind. *Hoc pace et venia tua*, according to my charter. Now, as your lordſhip is my witneſs that I would not trouble you whilſt your own cauſe was in hand (though that I know, that the farther from the term, the better the time was to deal for me) ſo that being concluded, I preſume I ſhall be one of your next cares. And having communicated with my brother of ſome courſe, either to perfect the firſt, or to make me ſome other way; or rather, by ſeeming to make me ſome other way to perfect the firſt; wherewith he agreed to acquaint your lordſhip; I am deſirous, for mine own better ſatisfaction, to ſpeak with your lordſhip myſelf: which I had rather were ſomewhere elſe than at court; and as ſoon as your lordſhip will aſſign me to wait on you. And ſo in, etc.

LIII. To my lord of Essex.

It may pleaſe your Lordſhip,

THAT your lordſhip is *in ſtatu quo prius*, no man taketh greater gladneſs than I do; the rather, becauſe I aſſure myſelf that of your eclipſes, as this hath been the longeſt, it ſhall be the leaſt; as the comical poet ſaith, *Neque illam tu ſatis noveras, neque te illa; hocque fit, ubi non vere vivitur*. For if I may be ſo bold as to ſay what I think, I believe neither your lordſhip looked to have found her majeſty in all points as you have done, neither her majeſty *per* caſe looked to have found your lordſhip as ſhe hath done. And therefore I hope upon this experience may grow more perfect knowledge, and upon knowledge more true conſent; which I, for my part, do infinitely wiſh, as accounting theſe accidents to be like the fiſh Remora; which though Terent. Heaut. I. 1.

it be not great, yet hath it a hidden property to hinder the ſailing of the ſhip. And therefore, as bearing unto your lordſhip, after her majeſty, of all publick perſons, the ſecond duty, I could not but ſignify unto you my affectionate gratulation. And ſo I commend your good lordſhip to the beſt preſervation of the divine Majeſty.

From Gray's-Inn.

LIV. To Sir ROBERT CECIL.

It may pleaſe your good Honour,

I Am apt enough to contemn *mendacia famae*, yet it is with this diſtinction, as fame walks among inferiors, and not as it hath entrance into ſome ears. And yet nevertheleſs, in that kind alſo I intend to avoid a ſuſpicious ſilence, but not to make any baſe apology. It is blown about the town, that I ſhould give opinion touching my lord of Eſſex cauſe; firſt, that it was a *praemunire*; and now laſt, that it reached to high treaſon: and this opinion ſhould be given in oppoſition to the opinion of the lord Chief Juſtice, and of Mr. Attorney-General. Sir, I thank God, whatſoever opinion my head ſerveth me to deliver to her majeſty, being aſked, my heart ſerveth me to maintain, the ſame honeſt duty directing me and aſſiſting me. But the utter untruth of this report God and the queen can witneſs; and the improbability of it, every man that hath wit, more or leſs, can conceive. The root of this I diſcern to be not ſo much a light and humorous envy at my acceſſes to her majeſty, (which of her majeſty's grace being begun in my firſt years, I would be ſorry ſhe ſhould eſtrange in my laſt years; for ſo I account them, reckoning by health, not by age) as a deep malice to your honourable ſelf; upon whom, by me, through nearneſs, they think to make ſome aſperſion. But as I know no remedy againſt libels and lyes; ſo I hope it ſhall make no manner of diſſeverance of your honourable good conceits and affection towards me; which is the thing I confeſs to fear. For as for any violence to be offered to me, wherewith my friends tell me, to no ſmall terror, that I am threatned, I thank God I have the privy coat of a good conſcience; and have a good while ſince put off any fearful care of life, or the accidents of life. So deſiring to be preſerved in your good opinion, I remain.

This laſt letter ſeems to be wrote 1600, in the interval between the return of the Earl of Eſſex from Ireland, and his hearing before the Lord Chancellor, etc.

LV. To my lord HENRY HOWARD.

My Lord,

THERE be very few beſides yourſelf, to whom I would perform this reſpect. For I contemn *mendacia famae*, as it walks among inferiors; though I neglect it not, as it may have entrance into ſome ears. For your lordſhip's love, rooted upon good opinion, I eſteem it highly, becauſe I have taſted the fruits of it; and we both have taſted of the beſt waters, in my account, to knit minds together. There is ſhaped a tale in London's forge, that beateth apace at this time, that I ſhould deliver opinion to the queen in my lord of Eſſex cauſe: firſt, that it was *praemunire*; and now laſt, that it was high treaſon; and this opinion to be in oppoſition and encounter of the lord Chief Juſtice's opinion, and the Attorney-General's. My lord, (I thank God) my wit ſerveth me not to deliver any opinion to the queen, which my ſtomach ſerveth me not to maintain; one and the ſame conſcience of duty guiding me and fortifying me. But the untruth of this fable God and my ſovereign can witneſs, and there I leave it; knowing no more remedy againſt lyes, than others do againſt libels. The root, no queſtion of it, is partly ſome light-headed envy at my acceſſes to her majeſty; which being begun and continued ſince my childhood, as long as her majeſty ſhall think me worthy of them, I ſcorn thoſe that ſhall think the contrary: And another reaſon is the aſperſion of this tale, and the envy thereof,

thereof, upon ſome greater man, in regard of my nearneſs. And therefore, my lord, I pray you anſwer for me, to any perſon that you think worthy your own reply, and my defence. For my lord of Eſſex, I am not ſervile to him, having regard to my ſuperior's duty. I have been much bound unto him. And on the other ſide, I have ſpent more time and more thoughts about his well doing, than ever I did about mine own. I pray God, you his friends, amongſt you, be in the right. *Nulla remedia tam faciunt dolorem, quam quae ſunt ſalutaria.* For my part, I have deſerved better, than to have my name objected to envy, or my life to a ruffian's violence. But I have the privy coat of a good conſcience. I am ſure theſe courſes and bruits hurt my lord more than all. So having written to your lordſhip, I deſire exceedingly to be preferred in your good opinion and love: And ſo leave you to God's goodneſs.

LVI. Two Letters, framed, The one as from Mr. Anthony Bacon, to the earl of Essex; The other, as the earl's anſwer thereunto.

Both written by Mr. Francis Bacon, at the inſtance of Mr. Anthony Bacon his brother, and to be ſhewed to the queen, upon ſome fit occaſion; as a mean to work her majeſty to receive the earl again to favour and attendance at court. They were deviſed whilſt my lord remained priſoner in his own houſe. See Sir Francis Bacon's *Apology*, to the earl of Devonſhire, Vol. i.

My ſingular good Lord,

THIS ſtanding at a ſtay in your lordſhip's fortunes doth make me, in my love towards your lordſhip, jealous leſt you do ſomewhat, or omit ſomewhat, that amounteth to a new error. For I ſuppoſe that of all former matters there is a full expiation; wherein, for any thing that your lordſhip doth, I for my part (who am remote) cannot caſt nor deviſe wherein any error ſhould be, except in one point, which I dare not cenſure nor diſſuade; which is, that (as the prophet ſaith) in this affliction you look up *ad manum percutientem*, and ſo make your peace with God. And yet I have heard it noted, that my lord of Leiceſter (who could never get to be taken for a ſaint) nevertheleſs in the queen's diſfavour waxed ſeeming religious; which may be thought by ſome, and uſed by others, as a caſe reſembling yours, if men do not ſee, or will not ſee the difference between your two diſpoſitions. But to be plain with your lordſhip, my fear rather is, becauſe I hear how ſome of your good and wiſe friends, not unpractiſed in the court, and ſuppoſing themſelves not to be unſeen in that deep and unſcrutable center of the court, which is her majeſty's mind, do not only toll the bell, but even ring out peals, as if your fortune were dead and buried, and as if there were no poſſibility of recovering her majeſty's favour; and as if the beſt of your condition were to live a private and retired life, out of want, out of peril, and out of manifeſt diſgrace; and ſo in this perſuaſion of theirs include a perſuaſion to your lordſhip to frame and accommodate your actions and mind to that end: I fear, I ſay, that this untimely deſpair may in time bring forth a juſt deſpair, by cauſing your lordſhip to ſlacken and break off your wiſe, loyal, and ſeaſonable endeavours and induſtry for redintegration to her majeſty's favour; in compariſon whereof all other circumſtances are but as *atomi*, or rather as a *vacuum* without any ſubſtance at all. Againſt this opinion it may pleaſe your lordſhip to conſider of theſe reaſons which I have collected, and to make judgment of them, neither out of the melancholy of your preſent fortune, nor out of the infuſion of that which cometh to you by others relation, (which is ſubject to much tincture) but *ex rebus ipſis*, out of the nature of the perſons and actions themſelves, as the truſtieſt and leaſt deceiving grounds of opinion. For though I am ſo unfortunate as to be a ſtranger to her majeſty's eye, and much more to her nature and manners; yet by that which is apparent, I do manifeſtly diſcern, that ſhe hath that character of the divine nature and goodneſs, *quos amavit, amavit uſque ad finem:* and where ſhe hath a creature, ſhe doth not deface nor defeat it; inſomuch as, if I obſerve rightly in thoſe perſons whom

heretofore ſhe hath honoured with her ſpecial favour, ſhe hath covered and remitted not only defects and ingratitudes in affection, but errors in ſtate and ſervice. Secondly, if I can ſpell and ſcholar-like put together the parts of her majeſty's proceedings now towards your lordſhip, I cannot but make this conſtruction, that her majeſty in her royal intention never purpoſed to call your lordſhip's doings into publick queſtion; but only to have uſed a cloud without a ſhower, in cenſuring them by ſome temporary reſtraint only of liberty, and debarring from her preſence. For, firſt the handling the cauſe in the Star-chamber, you not being called, was enforced by the violence of libelling and rumours (wherein the queen thought to have ſatisfied the world, and yet ſpared your lordſhip's appearance;) and after, when that means which was intended for the quenching of malicious bruits, turned to kindle them (becauſe it was ſaid your lordſhip was condemned unheard, and your lordſhip's ſiſter wrote that piquant letter) then her majeſty ſaw plainly, that theſe winds of rumours could not be commanded down without a handling of the cauſe, by making you a party, and admitting your defence. And to this purpoſe I do aſſure your lordſhip, that my brother Francis Bacon, who is too wiſe (I think) to be abuſed, and too honeſt to abuſe; though he be more reſerved in all particulars than is needful, yet in generality he hath ever conſtantly, and with aſſeveration affirmed to me, that both thoſe days, that of the Star-chamber, and that at my lord Keeper's, were won from the queen merely upon neceſſity and point of honour, againſt her own inclination. Thirdly, in the laſt proceeding, I note three points, which are directly ſignificant, that her majeſty did expreſſly forbear any point which was * irreparable, or might make your lordſhip in any degree uncapable of the return of her favour; or might fix any character indelible of diſgrace upon you: for ſhe ſpared the publick place of the Star-chamber, which ſpared ignominy; ſhe limited the charge preciſely not to touch upon any pretence diſloyalty; and no record remaineth to memory of the charge or ſentence. Fourthly, the very diſtinction which was made in the ſentence of ſequeſtration from the places of ſervice in ſtate, and leaving to your lordſhip the place of maſter of the horſe, doth, to my underſtanding, *indicativè*, point at this; that her majeſty meant to uſe your lordſhip's attendance in court, while the exerciſes of the other places ſtood ſuſpended. Fifthly, I have heard, and your lordſhip knoweth better than I, that now, ſince you were in your own cuſtody, her majeſty, in *verbo regio*, and by his mouth, to whom ſhe committeth her royal grants and decrees, hath aſſured your lordſhip ſhe will forbid, and not ſuffer, your ruin. Sixthly, as I have heard her majeſty to be a prince of that magnanimity, that ſhe will ſpare the ſervice of the ableſt ſubject or peer, when ſhe ſhall be thought to ſtand in need of it: ſo ſhe is of that policy, as ſhe will not loſe the ſervice of a meaner than your lordſhip, where it ſhall depend merely upon her choice and will. Seventhly, I hold it for a principle, that generally thoſe diſeaſes are hardeſt to cure whereof the cauſe is obſcure; and thoſe eaſieſt, whereof the cauſe is manifeſt; whereupon I conclude, that ſince it hath been your error in your courſes towards her majeſty, which hath prejudiced you, that your reforming and conformity will reſtore you; ſo as you may be *faber fortunae propriae*. Laſtly, conſidering your lordſhip is removed from dealing in cauſes of ſtate, and left only to a place of attendance; methinks the ambition of any man, who can endure no partners in ſtate matters, may be ſo quenched, as they ſhould not laborioufly oppoſe themſelves to your being in court: ſo as upon the whole, matter, I can find neither in her majeſty's perſon, nor in your own perſon, nor in any third perſon, neither in former precedents, nor in your own caſe, any cauſe of dry and peremptory deſpair. Neither do I ſpeak this ſo, but that, if her majeſty, out of her reſolution, ſhould deſign you to a private life, you ſhould be as willing, upon her appointment, to go into the wilderneſs, as into the land of promiſe. Only I wiſh your lordſhip will not preoccupate deſpair, but put truſt, next to God, in her majeſty's grace, and not to be wanting to yourſelf. I know your lordſhip may juſtly interpret, that this which I perſuade, may have ſome reference to my particular, becauſe I may truly

* Irrecuperable, *Cab.*

ſay, *Te ſtante*, (not *virebo*, for I am withered in myſelf, but) *manebo*, or *tenebo*; I ſhall in ſome ſort be, or hold out. But though your lordſhip's years and health may expect return of grace and fortune; yet your eclipſe for a time is an *ultimum vale* to my fortune; and were it not that I deſire and hope to ſee my brother eſtabliſhed, by her majeſty's favour (as I think him well worthy, for that he hath done and ſuffered) it were time I did take that courſe, from which I diſſuade your lordſhip. But now in the mean time, I cannot chuſe but perform theſe honeſt duties to you, to whom I have been ſo deeply bounden.

LVII. A LETTER framed as from the Earl; in anſwer to the former LETTER.

Mr. BACON,

I Thank you for your kind and careful letter. It perſuades me that which I wiſh ſtrongly, and hope for weakly; that is, poſſibility of reſtitution to her majeſty's favour: but your arguments that would cheriſh hope, turn to deſpair. You ſay the queen never meant to call me to publick cenſure, which ſheweth her goodneſs; but you ſee I paſſed under it, which ſheweth others power. I believe moſt ſtedfaſtly her majeſty never intended to bring my cauſe to a ſentence; and I believe as verily, that ſince that ſentence ſhe meant to reſtore me to attend upon her perſon. But they that could uſe occaſions (which was not in me to let) and amplify occaſions, and practiſe upon occaſions, to repreſent to her majeſty a neceſſity to bring me to the one, can and will do the like to ſtop me from the other. You ſay my errors were my prejudice, and therefore I can mend myſelf: it is true; but they that know that I can mend myſelf, and that if ever I recover the queen, that I will never loſe her again; will never ſuffer me to obtain intereſt in her favour. And you ſay the queen never forſook utterly, where ſhe inwardly favoured: but I know not whether the hour-glaſs of time hath altered her mind; but ſure I am the falſe glaſs of others informations muſt alter her, when I want acceſs to plead my own cauſe. I know I ought doubly to be her majeſty's; both *jure creationis*, for I am her creature; and *jure redemptionis*, for I know ſhe hath ſaved me from overthrow. But for her firſt love, and for her laſt protection, and all her great benefits, I can but pray for her majeſty; and my endeavours are now to make my prayers for her majeſty and myſelf better heard. For, thanks be to God, they that can make her majeſty believe I counterfeit with her, cannot make God believe that I counterfeit with him: and they which can let me from coming near unto her, cannot let me from drawing near unto him, as I hope I do daily. For your brother, I hold him an honeſt gentleman, and wiſh him all good, much rather for your ſake. Yourſelf I know hath ſuffered more for me and with me than any friend I have: yet I cannot but lament freely, as you ſee I do; and adviſe you not to do that which I do, which is to deſpair. You know letters what hurt they have done me, and therefore make ſure of this: and yet I could not (as having no other pledge of my love) but communicate freely with you, for the eaſe of my heart and yours.

LVIII. A LETTER to Mr. Secretary CECIL, after the [a] defeating of the Spaniſh forces in Ireland; inciting him to embrace the care of reducing that kingdom to civility, with ſome reaſons ſent incloſed.

It may pleaſe your Honour,

AS one that wiſheth you all increaſe of honour; and as one that cannot leave to love the ſtate, (what intereſt ſoever I have, or may come to have in it)

[a] Therefore this was wrote 1601.

and as one that now this dead vacation time hath ſome leiſure *ad aliud agendum*; I will preſume to propound unto you that which though you cannot but ſee, yet I know not whether you apprehend and eſteem it in ſo high a degree; that is, for the beſt action of importation to yourſelf, of ſound honour and merit to her majeſty and this crown, without ventoſity and popularity, that the riches of any occaſion, or the tide of any opportunity, can poſſibly miniſter or offer: and that is the cauſes of Ireland, if they be taken by the right handle. For if the wound be not ripped up again, and come to a * recrudency by new foreign ſuccours, I think that no phyſician will go on much with letting of blood, *in declinatione morbi*; but will intend to purge and corroborate. To which purpoſe I ſend you mine opinion, without labour of words, in the incloſed; and ſure I am, that if you ſhall enter into the matter according to the vivacity of your own ſpirit, nothing can make unto you a more gainful return. For you ſhall make the queen's felicity compleat, which now (as it is) is incomparable; and for yourſelf, you ſhall ſhew yourſelf as good a patriot as you are thought a politick, and make the world perceive you have not leſs generous ends, than dextrous delivery of yourſelf towards your ends; and that you have as well true arts and grounds of government, as the facility and felicity of practice and negotiation; and that you are as well ſeen in the periods and tides of eſtates, as in your own circle and way: than the which, I ſuppoſe, nothing can be a better addition and accumulation of honour unto you. This, I hope, I may in privateneſs write, either as a kinſman, that may be bold; or as a ſcholar, that hath liberty of diſcourſe, without committing any abſurdity. But if it ſeem any error in me thus to intromit myſelf, I pray your honour believe, I ever loved her majeſty and the ſtate, and now love yourſelf; and there is never any vehement love without ſome abſurdity, as the Spaniard well ſays; *deſuario con la calentura*. So deſiring your honour's pardon, I ever continue.

* feſtered ſenſe, *Cab.*

Conſiderations touching the QUEEN'S ſervice in IRELAND.

THE reduction of that country, as well to civility and juſtice, as to obedience and peace (which things, as affairs now ſtand, I hold to be inſeparable) conſiſteth in four points:

1. The extinguiſhing of the relicks of the war.
2. The recovery of the hearts of the people.
3. The removing of the root and occaſions of new troubles.
4. Plantations and buildings.

FOR the firſt; concerning the places, and times, and particularities of farther proſecution, in fact, I leave it to the opinion of men of war; only the difficulty is, to diſtinguiſh and diſcern the propoſitions, which ſhall be according to the ends of the ſtate here (that is, final and ſummary towards the extirpation of the troubles) from thoſe, which though they pretend publick ends, yet may refer indeed to the more private and compendious ends of the council there; or of the particular governours or captains. But ſtill (as I touched in my letter) I do think much letting blood, *in declinatione morbi*, is againſt method of cure: and that it will but induce neceſſity, and exaſperate deſpair; and percaſe diſcover the hollowneſs of that which is done already, which now blazeth to the beſt ſhew. For Iaglia's and proſcriptions of two or three of the principal rebels, they are no doubt, *jure gentium*, lawful: in Italy uſually practiſed upon the banditti; beſt in ſeaſon when a ſide goeth down: and may do good in two kinds; the one, if they take effect; the other, in the diſtruſt which may follow amongſt the rebels themſelves. But of all other points, to my underſtanding, the moſt effectual is, the well expreſſing or impreſſing the deſign of this ſtate, upon that miſerable and deſolate kingdom; containing the ſame between theſe two liſts or boundaries; the one, that the queen ſeeketh not an extirpation of that people, but a reduction; and that, now

al. Taglaes.

ſhe hath chaſtiſed them by her royal power and arms, according to the neceſſity of the occaſion, her majeſty taketh no pleaſure in effuſion of blood, or diſplanting of ancient generations. The other, that her majeſty's princely care is principally and intentionally bent upon the action of Ireland; and that ſhe ſeeketh not ſo much the eaſe of charge, as the royal performance of the office of protection, and reclaim of thoſe her ſubjects: and in a word, that the caſe is altered ſo far as may ſtand with the honour of the time paſt: which it is eaſy to reconcile, as in my laſt note I ſhewed. And again I do repeat, that if her majeſty's deſign be *ex profeſſo* to reduce wild and barbarous people to civility and juſtice, as well as to reduce rebels to obedience, it makes weakneſs turn chriſtianity, and conditions graces; and ſo hath a fineneſs in turning utility upon point of honour, which is agreeable to the humour of theſe times. And beſides, if her majeſty ſhall ſuddenly abate the liſts of her forces, and ſhall do nothing to countervail it in point of reputation, of a politic proceeding, I doubt things may too ſoon fall back into the ſtate they were in. Next to this: Adding reputation to the cauſe, by imprinting an opinion of her majeſty's care and intention upon this action, is the taking away of reputation from the contrary ſide, by cutting off the opinion and expectation of foreign ſuccours; to which purpoſe, this enterprize of Algiers (if it hold according to the advertiſement, and if it be not wrapped up in the period of this ſummer) ſeemeth to be an opportunity *coelitus demiſſa*. And to the ſame purpoſe nothing can be more fit than a treaty, or a ſhadow of a treaty of a peace with Spain, which methinks ſhould be in our power to faſten at leaſt *rumore tenus*, to the deluding of as wiſe people as the Iriſh. Laſtly, for this point; that which the ancients called *poteſtas facta redeundi ad ſanitatem*; and which is but a mockery when the enemy is ſtrong, or proud, but effectual in his declination; that is, a liberal proclamation of grace and pardon to ſuch as ſhall ſubmit, and come in within a time prefixed, and of ſome farther reward to ſuch as ſhall bring others in; that one's ſword may be ſharpened by another's, is a matter of good experience, and now, I think, will come in time. And percaſe, though I wiſh the excluſions of ſuch a pardon exceeding few, yet it will not be ſafe to continue ſome of them in their ſtrength, but to tranſlate them and their generations into England; and give them recompence and ſatisfaction here, for their poſſeſſions there; as the king of Spain did, by divers families of Portugal. To the effecting of all the points aforeſaid, and likewiſe thoſe which fall within the diviſions following, nothing can be in priority (either of time or matter) better than the ſending of ſome commiſſion of countenance, *ad res inſpiciendas et componendas*; for it will be a very ſignificant demonſtration of her majeſty's care of that kingdom; a credence to any that ſhall come in and ſubmit; a bridle to any that ſhall have their fortunes there, and ſhall apply their propoſitions to private ends; and an evidence that her majeſty, after arms laid down, ſpeedily purſueth a politick courſe, without neglect or reſpiration: and it hath been the wiſdom of the beſt examples of government.

TOWARDS the recovery of the hearts of the people, there be but three things in *natura rerum:*

1. Religion.
2. Juſtice and protection.
3. Obligation and reward.

For religion (to ſpeak firſt of piety, and then of policy) all divines do agree, that if conſciences be to be enforced at all (wherein yet they differ) two things muſt precede their inforcement; the one, means of inſtruction; the other, time of operation; neither of which they have yet had. Beſides, till they be more like reaſonable men than they yet are, their ſociety were rather ſcandalous to the true religion, than otherwiſe; as pearls caſt before ſwine: for till they be cleanſed from their blood, incontinency, and theft (which are now not the lapſes of particular perſons, but the very laws of the nation) they are incompatible with religion reformed. For policy, there is no doubt but to wreſtle with them now, is directly oppoſite to their reclaiming, and cannot but

continue their alienation of mind from this government. Beſides, one of the principal pretences, whereby the heads of the rebellion have prevailed both with the people, and with the foreigner, hath been the defence of the catholick religion: and it is this that likewiſe hath made the foreigner reciprocally more plauſible with the rebel. Therefore a toleration of religion (for a time, not definite) except it be in ſome principal towns and precincts, after the manner of ſome French edicts, ſeemeth to me to be a matter warrantable by religion, and in policy of abſolute neceſſity. And the heſitation in this point (I think) hath been a great caſting back of the affairs there. Neither if any Engliſh papiſt or recuſant ſhall, for liberty of his conſcience, transfer his perſon, family, and fortunes thither; do I hold it a matter of danger, but expedient to draw on undertaking, and to further population. Neither if Rome will cozen itſelf, by conceiving it may be ſome degree to the like toleration in England, do I hold it a matter of any moment; but rather a good mean to take off the fierceneſs and eagerneſs of the humour of Rome, and to ſtay further excommunications or interdictions for Ireland. But there would go hand in hand with this, ſome courſe of advancing religion indeed, where the people is capable thereof; as the ſending over ſome good preachers, eſpecially of that ſort which are vehement and zealous perſuaders, and not ſcholaſtical, to be reſident in principal towns; endowing them with ſome ſtipends out of her majeſty's revenues, as her majeſty hath moſt religiouſly and graciouſly done in Lancaſhire: and the recontinuing and repleniſhing the college begun at Dublin, the placing of good men to be biſhops in the ſees there, and the taking care of the verſions of bibles, and catechiſms, and other books of inſtruction, into the Iriſh language; and the like religious courſes, both for the honour of God, and for the avoiding of ſcandal and inſatisfaction here, by the ſhew of a toleration of religion in ſome parts there.

For juſtice: the barbariſm and deſolation of the country conſidered, it is not poſſible they ſhould find any ſweetneſs at all of juſtice; if it ſhall be (which hath been the error of times paſt) formal, and fetched far off from the ſtate; becauſe it will require running up and down for proceſs; and give occaſion for polling and exactions by fees, and many other delays and charges. And therefore there muſt be an interim in which the juſtice muſt be only ſummary; the rather, becauſe it is fit and ſafe for a time the country do participate of martial government; and therefore, I could wiſh in every principal town or place of habitation, there were a captain or governour; and a judge, ſuch as recorders and learned ſtewards are here in corporations, who may have a prerogative commiſſion to hear and determine *ſecundum ſanam diſcretionem*; and as near as may be to the laws and cuſtoms of England; and that by bill or plaint, without original writ; reſerving from their ſentence matter of free-hold and inheritance, to be determined by a ſuperior judge itinerant; and both ſentences, as well of the balywick judge, as itinerant, to be reverſed (if cauſe be) before the council of the province to be eſtabliſhed there with fit inſtructions.

For obligation and reward; it is true (no doubt) which was anciently ſaid, that a ſtate is contained in two words, *praemium* and *poena*; and I am perſuaded, if a penny in the pound which hath been ſpent in *poena* (for this kind of war is but *poena*, a chaſtiſement of rebels, without fruit or emolument to this ſtate) had been ſpent in *praemio*, that is, in rewarding, things had never grown to this extremity. But to ſpeak forwards. The keeping of the principal Iriſh perſons in terms of contentment, and without cauſe of particular complaint; and generally the carrying of an even courſe between the Engliſh and the Iriſh; whether it be in competition, or whether it be in controverſy, as if they were one nation (without that ſame partial courſe which hath been held by the governours and counſellors there, that ſome have favoured the Iriſh, and ſome contrary) is one of the beſt medicines of that ſtate. And as for other points of contentment, as the countenancing of their nobility as well in this court as there; the imparting of knighthood; the care of education of their children, and

and the like points of comfort and allurement; they are things which fall into every man's conſideration.

For the extirpating of the ſeeds of troubles, I ſuppoſe the main roots are but three. The firſt, the ambition and abſoluteneſs of the chief of the families and ſepts. The ſecond, the licentious idleneſs of their kernes and ſoldiers, that lie upon the country, by ceſſes and ſuch like oppreſſions. And the third, the barbarous laws, cuſtoms, their brehen laws, habits of apparel, their poets or heralds that enchant them in ſavage manners, and ſundry other ſuch dregs of barbariſm and rebellion, which by a number of politick ſtatutes of Ireland, meet to be put in execution, are already forbidden; unto which ſuch additions may be made as the preſent time requireth. But the deducing of this branch requireth a more particular notice of the ſtate and manners there, than falls within my compaſs.

For plantations and buildings, I do find it ſtrange that in the laſt plot for the population of Munſter, there were limitations how much in demeſne, and how much in farm, and how much in tenancy; again, how many buildings ſhould be erected, how many Iriſh in mixture ſhould be admitted, and other things foreſeen almoſt to curioſity: but no reſtraint that they might not build *ſparſim* at their pleaſure; nor any condition that they ſhould make places fortified and defenſible: which omiſſion was a ſtrange neglect and ſecureneſs, to my underſtanding. So as for this laſt point of plantations and buildings, there be two conſiderations which I hold moſt material; the one for quickening, and the other for aſſuring. The firſt is, that choice be made of ſuch perſons for the government of towns and places, and ſuch undertakers be procured, as be men gracious and well beloved, and are like to be well followed. Wherein for Munſter, it may be (becauſe it is not *res integra*; but that the former undertakers ſtand intereſſed) there will be ſome difficulty: but ſurely, in mine opinion, either by agreeing with them, or by over-ruling them with a parliament in Ireland (which in this courſe of a politick proceeding, infinite occaſions will require ſpeedily to be held) it will be fit to ſupply fit qualified perſons for undertakers. The other, that it be not left (as heretofore) to the pleaſure of the undertakers and adventurers, where and how to build and plant; but that they do it according to a preſcript or formulary. For firſt, the places, both maritime and inland, which are fitteſt for colonies or garriſons, as well for doubt of the foreigner, as for keeping the country in bridle, would be found, ſurveyed, and reſolved upon: and then that the patentees be tied to build in thoſe places only, and to fortify as ſhall be thought convenient. And laſtly, it followeth of courſe, in countries of new populations, to invite and provoke inhabitants by ample liberties and charters.

LIX. To my lord of Canterbury [Dr. Whitgift.]

It may pleaſe your Grace,

I Have conſidered the objections, peruſed the ſtatutes, and framed the alterations, which I ſend, ſtill keeping myſelf within the brevity of a letter, and form of a narration; not entering into a form of argument or diſputation: for, in my poor conceit, it is ſomewhat againſt the majeſty of princes actions, to make too curious and ſtriving apologies, but rather to ſet them forth plainly, and ſo as there may appear an harmony and conſtancy in them, ſo that one part upholdeth another. And ſo I wiſh your grace all proſperity. From my poor lodging, this, etc.

Your Grace's moſt dutiful pupil and ſervant.

LX. To Sir Thomas Lucy.

SIR,

THERE was no news better welcome to me this long time, than that of the good ſucceſs of my kinſman; wherein if he be happy, he cannot be happy alone, it conſiſting of two parts. And I render you no leſs kind thanks for your aid and favour towards him, than if it had been for myſelf; aſſuring you that this bond of alliance ſhall on my part tye me to give all the tribute to your good fortune upon all occaſions, that my poor ſtrength can yield. I ſend you, ſo required, an abſtract of the lands of inheritance; and one leaſe of great value, which my kinſman bringeth; with a note of the tenures, values, contents, and ſtate, truly and perfectly drawn; whereby you may perceive the land is good land, and well countenanced by ſcope of acres, woods, and royalties; though the total of the rents be ſet down as it now goeth, without improvement: in which reſpect it may ſomewhat differ from your firſt note. Out of this, what he will aſſure in jointure, I leave it to his own kindneſs; for I love not to meaſure affection. To conclude, I doubt not your daughter might have married to a better living, but never to a better life; having choſen a gentleman bred to all honeſty, virtue, and worth, with an eſtate convenient. And if my brother or myſelf were either thrivers, or fortunate in the queen's ſervice, I would hope there ſhould be left as great an houſe of the Cokes in this gentleman, as in your good friend Mr. Attorney-General. But ſure I am, if Scriptures fail not, it will have as much of God's bleſſing; and ſufficiency is ever the beſt feaſt, etc.

LXI. A Letter [a] of recommendation of his ſervice to the earl of Northumberland, a few days before queen Elizabeth's death.

It may pleaſe your good Lordſhip,

AS the time of ſowing a ſeed is known, but the time of coming up and diſcloſing is caſual, or according to the ſeaſon; ſo I am witneſs to myſelf, that there hath been covered in my mind a long time, a ſeed of affection and zeal towards your lordſhip, ſown by the eſtimation of your virtues, and your particular honours and favours to my brother deceaſed, and myſelf; which ſeed ſtill ſpringing, now burſteth forth into this profeſſion. And to be plain with your lordſhip, it is very true (and no winds or noiſes of civil matters can blow this out of my head or heart) that your great capacity and love towards ſtudies and contemplations of an higher and worthier nature, than popular (a nature rare in the world, and in a perſon of your lordſhip's quality almoſt ſingular) is to me a great and chief motive to draw my affection and admiration towards you. And therefore, good my lord, if I may be of any uſe to your lordſhip, by my head, tongue, or pen, means, or friends, I humbly pray you to hold me your own; and herewithal, not to do ſo much diſadvantage to my good mind, nor partly to your own worth, as to conceive that this commendation of my humble ſervice proceedeth out of any ſtraits of my occaſions, but merely out of an election, and indeed the fulneſs of my heart. And ſo wiſhing your lordſhip all proſperity, I continue, etc.

LETTERS

[a] This letter is printed twice in the Cabala, and inſcribed to the earl of Northumberland, p. 25. and to the earl of Northampton, p. 27.

LETTERS, in the reign of king JAMES.

LXII. To Mr. [a] FOWLYS.

SIR,

THE occaſion awaketh in me the remembrance of the conſtant and mutual good offices, which paſſed between my good brother and yourſelf; whereunto (as you know) I was not altogether a ſtranger; though the time and deſign (as between brethren) made me more reſerved. But well do I bear in mind the great opinion which my brother (whoſe judgment I much reverence) would often expreſs to me, of your extraordinary ſufficiency, dexterity, and temper, which he had found in you, in the buſineſs and ſervice of the king our ſovereign lord [b]. This latter bred in me an election, as the former gave an inducement for me, to addreſs myſelf to you; and to make this ſignification of my deſire towards a mutual entertainment of good affection and correſpondence between us: hoping that both ſome good effect may reſult of it towards the king's ſervice; and that for our particulars, though occaſion give you the precedence of furthering my being known, by good note, unto the king; ſo no long time will intercede before I, on my part, ſhall have ſome means given to requite your favours, and to verify your commendation. And ſo with my loving commendations, good Mr. Fowlys, I leave you to God's goodneſs.

From Gray's-Inn 27 March 1603.

[a] Upon the death of queen Elizabeth, Mr. Fowlys was ſent out of Scotland with letters to divers of the lords of the privy council; ſoon after whoſe arrival the lord Treaſurer, the lord High Admiral and Sir Robert Cecil, principal ſecretary of ſtate, returned a large letter of thanks, and of advice to the king concerning the then poſture of affairs. He was afterwards created a baronet by the name of Sir David Fowlys of Ingleby, in the north riding of Yorkſhire, where he had ſeated himſelf, and where his poſterity now remain. *Stephens.*

[b] Mr. Anthony Bacon, the elder and only brother to our author, of the whole blood, reported to have been equal to him in height of wit, tho' inferior in the improvements of learning and knowledge. Sir Henry Wotton obſerves, that he was a gentleman of impotent feet, but of a nimble head, through whoſe hands ran all the intelligences with Scotland. *Stephens.*

LXIII. To Mr. FOWLYS.

Mr. FOWLYS,

I Did write unto you yeſterday by Mr. Lake (who was diſpatched hence from their lordſhips) a letter of reviver of thoſe ſparks of former acquaintance between us in my brother's time: and now, upon the ſame confidence, finding ſo fit a meſſenger, I would not fail to ſalute you; hoping it will fall out ſo happily, as that you ſhall be one of the king's ſervants which his majeſty will firſt employ here with us; where I hope to have ſome means not to be barren in friendſhip towards you.

We all thirſt after the king's coming, accounting all this but as the dawning of the day before the riſing of the ſun, till we have his preſence. And though now his majeſty muſt be *Janus bifrons*, to have a face to Scotland, as well as to England, yet *quod nunc inſtat agendum:* the expectation is here that he will come in ſtate, and not in ſtrength [c]. So for this time I commend you to God's goodneſs. 28 March 1603.

LXIV.

[c] My lord Bacon, in his hiſtory of K. Henry VII, obſerves the like conduct in that wiſe prince, in order to quiet the fears of the people, and diſperſe the conceit of his coming in by conqueſt.

LXIV. To Sir *THOMAS CHALONER, then in Scotland, before his majesty's entrance.

SIR,

FOR our money matters, I am assured you received no insatisfaction; for you know my mind, and you know my means; which now the openness of the time, caused by this blessed consent, and peace, will increase; and so our agreement, according to your time, be observed. For the present, according to the Roman adage (that "one cluster of grapes ripeneth best besides "another") I know you hold me not unworthy, whose mutual friendship you should cherish: and I, for my part, conceive good hope, that you are likely to become an acceptable servant to the king our master: not so much for any way made heretofore (which, in my judgment, will make no great difference), as for the stuff and sufficiency which I know to be in you; and whereof, I know, his majesty may reap great service. And therefore, my general request is, that, according to that industrious vivacity which you use towards your friends, you will further his majesty's good conceit and inclination towards me, to whom words cannot make me known, neither mine own, nor others; but time will, to no disadvantage of any that shall fore-run his majesty's experience, by your testimony and commendation. And though occasion give you the precedence of doing me this special good office; yet I hope no long time will intercede before I shall have some means to requite your favour and acquit your report. More particularly, having thought good to make oblation of my most humble service to his majesty by a few lines, I desire your loving care and help, by yourself, or such means as I refer to your discretion, to deliver and present the same to his majesty's hands: Of which letter I send you a copy, that you may know what you carry; and may take of Mr. Matthew the letter itself, if you be pleased to undertake the delivery. Lastly, I do commend to yourself, and such your courtesie as occasion may require, this gentleman Mr. Matthew, eldest son to my lord bishop of Duresme, and my very good friend, assuring you that any courtesy you shall use towards him, you shall use to a very worthy young gentleman, and one I know, whose acquaintance you will much esteem. And so I ever continue. 1603.

*Sir Thomas Chaloner was son to Sir Thomas Chaloner, who had behaved himself with great valour, under the command of the emperor Charles V, and the duke of Somerset, and with equal prudence, in the courts of the emperor and king of Spain; whither he was sent ambassador in the beginning of the reign of queen Elizabeth. The son was, like his father, a gentleman of great parts and abilities, to whose care king James committed the tuition of prince Henry, 17 Aug. 1603. *Rymer*, xvi. 545. Sir Thomas had, a few years before, made the first discovery of alum mines in this nation, at or near Gisborough in Yorkshire; where some of his name and family still continue. He survived his royal pupil just three years, dying in November, 1615. *Stephens.*

LXV. An offer of service to the KING, upon his first coming in.

It may please your most excellent Majesty,

IT is observed by some, upon a place in the Canticles, *Ego sum flos campi, et lilium convallium*, that, *a dispari*, it is not said, *Ego sum flos horti, et lilium montium*; because the majesty of that person is not enclosed for a few, nor appropriate to the great. And yet, notwithstanding, this royal virtue of access, which both nature and judgment have planted in your Majesty's mind, as the portal of all the rest, could not of itself (my imperfections considered) have animated me to make oblation of myself immediately to your Majesty, had it not been joined with an habit of the like liberty, which I enjoyed with my late dear sovereign mistress; a princess happy in all things else, but most happy in such a successor. And yet farther, and more nearly, I was not a little encouraged, not only upon a supposal, that unto your Majesty's sacred ear (open to the air of all virtues) there might perhaps have come some † small breath of the good memory of my father, so long a principal counsellor in this your

† Notice, *Matth.*

kingdom[a]; but alſo a more particular knowledge of the infinite devotion and inceſſant endeavours (beyond the ſtrength of his body, and the nature of the times) which appeared in my good brother, Mr. Anthony Bacon, towards your Majeſty's ſervice; and were on your Majeſty's part, through your ſingular benignity, by many moſt gracious and lively ſignifications and favours accepted and acknowledged, beyond the merit of any thing he could effect: which endeavours and duties, for the moſt part, were common to myſelf with him, though by deſign (as between brethren) diſſembled. And therefore, moſt high and mighty King, my moſt dear and dread ſovereign lord, ſince now the corner-ſtone is laid of the mightieſt monarchy in Europe; and that God above, who hath ever a hand in bridling the floods and motions both of the ſeas, and of peoples hearts, hath by the miraculous and univerſal conſent (the more ſtrange, becauſe it proceedeth from ſuch diverſity of cauſes) in your coming in, given a ſign and token of great happineſs in the continuance of your reign; I think there is no ſubject of your Majeſty's, which loveth this iſland, and is not hollow or unworthy, whoſe heart is not ſet on fire, not only to bring you peace-offerings, to make you propitious; but to ſacrifice himſelf a burnt-offering or holocauſt to your Majeſty's ſervice: amongſt which number no man's fire ſhall be more pure and fervent than mine; but how far forth it ſhall blaze out, that reſteth in your Majeſty's ‡ employment. So thirſting after the happineſs of kiſſing your royal hand, I continue ever. 1603.

‡ Pleaſure to ordain. *Matt.*

[a] Sir N. Bacon, lord keeper of the great ſeal from the firſt to the 21 Elizabeth.

LXVI. A Letter commending his love to the lord of [b] KINGLOSSE, upon his majeſty's entrance.

My Lord,

THE preſent occaſion awakeneth in me a remembrance of the conſtant amity and mutual good offices which paſſed between my brother deceaſed and your lordſhip, whereunto I was leſs ſtrange, than in reſpect of the time I had reaſon to pretend; and withal, I call to mind the great opinion which my brother, who ſeldom failed in judgment of a perſon, would often expreſs to me of your lordſhip's great wiſdom and ſoundneſs, both in head and heart, towards the ſervice and affairs of our ſovereign lord the king.

The one of thoſe hath bred in me an election, and the other a confidence to addreſs my good will and ſincere affection to your good lordſhip; not doubting, in regard that my courſe of life hath wrought me not to be altogether unſeen in the matters of the kingdom, that I may be of ſome uſe, both in point of ſervice to the king, and in your lordſhip's particular.

And on the other ſide, I will not omit to deſire humbly your lordſhip's favour, in furthering a good conceit and impreſſion of my moſt humble duty and true zeal towards the king; to whoſe majeſty words cannot make me known, neither mine own nor others; but time will, to no diſadvantage of any, that ſhall forerun his majeſty's experience, by their humanity and commendations. And ſo I commend your good lordſhip to God's providence and protection.

From Gray's-Inn, etc. 1603.

[b] Edward Bruce Mil. Dom. Kinloſſe, Magiſt. Rotulorum curiae cancellariae, 19 Jul. 1603. *Rymer* xvi. p. 491.

LXVII. A Letter to doctor MORISON, a Scotiſh phyſician, upon his majeſty's coming in.

Mr. Doctor MORISON,

I Have thought good by this my letter to renew this my ancient acquaintance which hath paſſed between us, ſignifying my good mind to you, to perform to you any good office, for your particular, and my expectation; and

a firm assurance of the like on your part towards me: wherein I confess you may have the start of me, because occasion hath given you the precedency in investing you with opportunity to use my name well, and by your loving testimony to further a good opinion of me in his majesty, and the court.

But I hope my experience of matters here will, with the light of his majesty's favour, enable me speedily both to requite your kindness, and to acquit and make good your testimony and report. So not doubting to see you here with his majesty; considering that it belongeth to your art to feel pulses (and I assure you, Galen doth not set down greater variety of pulses, than do vent here in mens hearts) I wish you all prosperity, and remain

Yours, etc.

From my chamber at Gray's-Inn, etc. 1603.

LXVIII. To Mr.[a] DAVIS, gone to meet the king.

Mr. DAVIS,

THough you went on the sudden, yet you could not go before you had spoken with yourself, to the purpose which I will now write: And therefore I know it shall be altogether needless, save that I meant to shew you, that I was not asleep. Briefly, I commend myself to your love and the well using my name; as well in repressing and answering for me, if there be any biting or nibling at it in that place, as by imprinting a good conceit and opinion of me, chiefly in the king (of whose favour I make myself comfortable assurance) as otherwise in that court: And not only so, but generally to perform to me all the good offices which the vivacity of your wit can suggest to your mind, to be performed to one, with whose affection you have so great sympathy, and in whose fortune you have so great interest. So desiring you to be good to concealed poets, I continue. 1603.

a Mr. Davis having made his way unto the knowledge of K. James, by a poem he dedicated unto the late queen, entitled, *Nosce teipsum*, was very favourably received by the king; and not long after made his attorney-general in Ireland, and serjeant at law: And in the next reign, was nominated to be chief justice of the king's bench in England upon the displacing of Sir Randal Crew; but died suddenly on 27 December, 1626. He was very conversant with the wits of his time; some of his writings declare his excellency in that kind, as others do his abilities in his own profession. *Stephens.*

LXIX. To Mr. ROBERT KEMPE, upon the death of queen Elizabeth.

Mr. KEMPE,

THIS alteration is so great, as you might justly conceive some coldness of my affection towards you, if you should hear nothing from me, I living in this place. It is in vain to tell you with what wonderful still and calm this wheel is turned round; which, whether it be a remnant of her felicity that is gone, or a fruit of his reputation that is coming, I will not determine. For I cannot but divide myself between her memory and his name: Yet we account it but a fair morn, before sun-rising, before his majesty's presence: though for my part I see not whence any weather should arise. The papists are contained with fear enough, and hope too much. The French is thought to turn his practice upon procuring some disturbance in Scotland, where crowns may do wonders: But this day is so welcome to the nation, and the time so short, as I do not fear the effect. My lord of Southampton expecteth release by the next dispatch, and is already much visited and much well-wished. There is continual posting by men of good quality towards the king: the rather, I think, because this spring-time it is but a kind of sport. It is hoped, that as the state here hath performed the part of good attorneys to deliver the king quiet possession of his kingdoms, so the king will redeliver them quiet possession of their places; rather filling places void, than removing men placed. So, etc. 1603.

LXX.

LXX. To the earl of [a] NORTHUMBERLAND, recommending a proclamation to be made by the king at his entrance.

It may pleaſe your Lordſhip,

I Do hold it a thing formal and neceſſary for the king to forerun his coming (be it never ſo ſpeedy) with ſome gracious declaration for the cheriſhing, entertaining, and preparing of mens affections [b]. For which purpoſe I have conceived a draught, it being a thing familiar in my miſtreſs her times to have my pen uſed in publick writings of ſatisfaction. The uſe of this may be in two ſorts: Firſt, properly, if your lordſhip think it convenient to ſhew the king any ſuch draught, becauſe the veins and pulſes of this ſtate cannot but be beſt known here; which if your lordſhip ſhould do, then I would deſire you to withdraw my name, and only ſignify, that you gave ſome heads of direction of ſuch a matter to one, of whoſe ſtyle and pen you had ſome opinion. The other collateral; that though your lordſhip make no other uſe of it, yet it is a kind of portraiture of that which I think worthy to be adviſed by your lordſhip to the king; and perhaps more compendious and ſignificant, than if I had ſet them down in articles. I would have attended your lordſhip but for ſome little phyſick I took. To-morrow morning I will wait on you. So I ever, etc. 1603.

[a] Henry Piercy, the ninth earl of Northumberland of that name, had not only great learning himſelf, but was alſo patron of other learned men, eſpecially mathematicians. And tho' no man eſpouſed the title of K. James to the Engliſh throne with a greater zeal than himſelf, declaring that he would remove all impediments by his ſword; yet the king (perhaps fearing that one who thought he could confer crowns, might attempt to reſume them) cauſed this great man to be ſo effectually proſecuted in the ſtar-chamber in the year 1606, upon a ſuppoſition of his being privy to the powder-plot, or at leaſt of concealing his couſin Mr. Thomas Piercy one of the conſpirators therein; that he was fined 30000*l.* and condemned to perpetual impriſonment. But the lord Hay, afterwards created viſcount Doncaſter and earl of Carliſle, marrying in 1617 his youngeſt daughter the lady Lucy Piercy, a lady of the moſt celebrated wit and beauty of any in her times; his releaſe from the Tower was obtained about the year 1621. Tho' it is ſaid, the earl was with great difficulty prevail'd to accept of this favour, becauſe procured by a man he diſdained to own to be ſo near a relation, as that of a ſon. *Stephens.*

[b] Inſtead of this declaration, Sir Francis Bacon tells us, that 'at this time there came forth in print the 'king's book containing matter of inſtruction to the prince his ſon, touching the office of a king; which fall-'ing into every man's hand, filled the whole realm as with a good perfume or incenſe before the king's coming 'in; and far exceeded any formal or curious edict or declaration, which could have been deviſed of that na-'ture, wherewith princes in the beginning of their reigns do uſe to grace themſelves, or at leaſt expreſs them-'ſelves gracious in the eyes of their people.' Vol. II. p. 362.

LXXI. To the earl of [c] SOUTHAMPTON, upon the king's coming in.

It may pleaſe your Lordſhip,

I Would have been very glad to have preſented my humble ſervice to your lordſhip by my attendance, if I could have foreſeen that it ſhould not have been unpleaſing unto you. And therefore, becauſe I would be ſure to commit no error, I choſe to write; aſſuring your lordſhip, how little ſoever it may ſeem credible to you at firſt, yet it is as true as a thing that God knoweth; that this great change hath wrought in me no other change towards your lordſhip than this, that I may ſafely be that to you now, which I was truly before. And ſo craving no other pardon, than for troubling you with my letter, I do not now begin to be, but continue to be

1603. *Your lordſhip's humble and much devoted*

FR. BACON.

LXXII.

[c] Henry Wriotheſley earl of Southampton having been involved in the guilt of the unfortunate earl of Eſſex, was condemned for the ſame crimes; but that earl, who ſeemed careleſs of his own life, interceded for the life of his friend, as did Southampton's own modeſt behaviour at his trial: From which time he ſuffered impriſonment in the Tower till the 10th of April, 1603. He was afterwards reſtored in blood, made knight of the garter, and one of his majeſty's privy council. *Stephens.*

LXXII. To Mr.[a] MATTHEWS, signifying the wise proceedings of king JAMES at his first entrance into England.

SIR,

I Was heartily glad to hear that you had passed so great a part of your *journey in so good health. My aim was right in my address of letters to those persons in the court of Scotland, who were likeliest to be used for the affairs of England; but the pace they held was too swift, for the men were come away before my letters could reach them. With the first I have renewed acquaintance, and it was like a bill of revivor, by way of cross-suits; for he was as ready to have begun with me. The second did this day arrive, and took acquaintance with me instantly in the council-chamber, and was willing to entertain me with farther demonstrations of confidence, than I was willing at that time to admit. But I have had no serious speech with him, nor do I yet know whether any of the doubles of my letter have been delivered to the king. It may perhaps have proved your luck to be the first.

* Viz. Into Scotland to meet the king. See N. LXIV p. 452.

Things are here in good quiet. The king acts excellently well; for he puts in clauses of reservation to every proviso. He saith, he would be sorry to have just cause to remove any. He saith, he will displace none who hath served the queen and state sincerely, etc. The truth is, here be two extremes; some few would have no change, no not reformation: some many would have much change even with perturbation. God, I hope, will direct this wise king to hold a mean between reputation enough and no terrors[b]. In my particular I have many comforts and assurances; but in my own opinion the chief is, that the canvassing world is gone, and the deserving world is come. And withal I find myself as one awaked out of sleep; which I have not been this long time, nor could, I think, have been now without such a great noise as this, which yet is in *aura leni*. I have written this to you in haste, my end being no more than to write, and thereby to make you know that I will ever continue the same, and still be sure to wish you as heartily well as to myself. 1603.

LXXIII.

[a] Mr. Matthews was son to Dr. Toby Matthews bishop of Durham, afterwards archbishop of York; an eminent divine, consider'd either in the schools, the pulpit, or the episcopal chair. He was born in Oxford in 1578, whilst his father was dean of Christ's-church; but was, to the great grief of his parents, a few years after the king's accession, reconciled to the church of Rome, through the means, as is said, of Parsons the Jesuit: and became so industrious an agent for her, that his refusal of the oath of allegiance establish'd by act of parliament, together with some imprudent carriage, gave the king such offence, that he was in a manner exiled the kingdom in the year 1607. He continued roving from one country and prince's court to another till 1617, when applying himself with much earnestness to the earl of Buckingham, he obtain'd a permission to come into England, which he did in July that year, presenting himself in the first place to Sir Francis Bacon then lord keeper of the great seal. But the king being afterwards displeased with him, did, notwithstanding his moving and pressing letters, command him again to depart in October, 1618. Yet in 1622, he was recalled to assist in the business of the Spanish match then in agitation, and knighted the year following. He is represented as a man of very good parts and literature, but of an active and restless temper. What opinion Sir Francis Bacon had of him when young, appears before in his letter to Sir Thomas Chaloner; and what esteem he had for Sir Francis, may be seen in the preface to his collection of letters: at the beginning of which is printed his character of the lady Carlisle whom I have mentioned N° LXX. He died at Gaunt in Flanders in 1655. *Stephens.*

[b] Upon this occasion it may not be amiss to remember what cardinal d'Ossat writ from Rome to M. de Villeroy upon the accession of king James to the crown of England, part of which I wish no prince would ever forget.

" C'est l'ordinaire des hommes de regarder plus au soleil orient qu'à l'occident, & des Princes bien avisez " qui sont appellez à un nouvel estat, d'y entrer doucement, sans irriter ni mécontenter personne ni dedans " ni dehors. Si ce Prince continüe guidé par la vertu & accompagné de bonheur, comme jusques icy, il " sera très-grand, & fera bon l'avoir pour amy; & nous, qui depuis quelques années en ça n'avions eu l'œil " quasi qu'en un lieu, faudra que l'ayons cy-après en deux; comme faudra bien aussi que fassent encore d'au- " tres. Et en fin de compte, *Celui de tous qui regnera le mieux & le plus justement à l'honneur & gloire de* " *Dieu, & au soulagement, profit & felicité de ses sujets; sera le plus asseuré, le plus fort, & le plus aimé, loué & beni* " *de Dieu & des hommes; en quoy consiste la vraye & perdurable grandeur & puissance des Roys, & l'asseurance de leur* " *posterité.*" Stephens.

LXXIII. To the earl of NORTHUMBERLAND.

It may pleaſe your good Lordſhip,

I Would not have loſt this journey, and yet I have not that I went for; for I have had no private conference to purpoſe with the king; no more hath almoſt any other Engliſh: For the ſpeech his majeſty admitteth with ſome noblemen, is rather matter of grace, than matter of buſineſs. With the attorney he ſpake, urged by the treaſurer of Scotland, but no more than needs muſt. After I had received his majeſty's firſt welcome, and was promiſed private acceſs; yet not knowing what matter of ſervice your lordſhip's letter carried (for I ſaw it not) and well knowing that primeneſs in advertiſement is much; I choſe rather to deliver it to Sir Thomas Heſkins, than to cool it in my own hands, upon expectation of acceſs. Your lordſhip ſhall find a prince the fartheſt from vain-glory that may be; and rather like a prince of the ancient form, than of the latter time. His ſpeech is ſwift and curſory, and in the full dialect of his country; and in ſpeech of buſineſs, ſhort; in ſpeech of diſcourſe, large. He affecteth popularity by gracing ſuch as he hath heard to be popular, and not by any faſhions of his own: He is thought ſomewhat general in his favours; and his virtue of acceſs is rather, becauſe he is much abroad, and in preſs, than that he giveth eaſy audience. He haſteneth to a mixture of both kingdoms and occaſions, faſter perhaps than policy will well bear. I told your lordſhip once before, that (methought) his majeſty rather aſked counſel of the time paſt, than of the time to come: But it is yet early to ground any ſettled opinion. For the particulars, I refer to conference, having in theſe generals gone farther in ſo tender an argument, than I would have done, were not the bearer hereof ſo aſſured. So I continue, etc. 1603.

LXXIV. A letter to Mr. [a] MURRAY, of the king's bed-chamber.

Mr. MURRAY,

IT is very true, that his majeſty, moſt graciouſly at my humble requeſt, knighted the laſt ſunday my brother-in-law, a towardly young gentleman; for which favour I think myſelf more bound to his majeſty, than for the benefit of ten knights: And to tell you truly, my meaning was not that the ſuit of this other gentleman Mr. Temple ſhould have been moved in my name.

For I ſhould have been unwilling to have moved his majeſty for more than one at once, though many times in his majeſty's courts of juſtice, if we move once for our friends, we are allowed to move again for our fee.

But indeed my purpoſe was, that you might have been pleaſed to have moved it as for myſelf.

Nevertheleſs, ſince it is ſo far gone, and that the gentleman's friends are in ſome expectation of ſucceſs, I leave it to your kind regard what is farther to be done, as willing to give ſatisfaction to thoſe which have put me in truſt, and loth on the other ſide to preſs above good manners. And ſo with my loving commendations I remain

1603. *Yours*, etc.

[a] Made tutor to the D. of York, with a yearly penſion of 300 marks, June 28, 1605. *Rymer* XVI. p. 631.

LXXV. To Mr. PIERCE, ſecretary to the lord deputy of Ireland.

Mr. PIERCE,

I Am glad to hear of you, as I do; and for my part, you ſhall find me ready to take any occaſion to further your credit and preferment. And I dare aſſure you (though I am no undertaker) to prepare your way with my lord of Saliſbury, for any good fortune which may befal you. You teach me to complain of buſineſs, whereby I write the more briefly; and yet I am ſo unjuſt, as that which I alledge for mine own excuſe, I cannot admit for yours: for I

muſt, by expecting, exact your letters, with this fruit of your ſufficiency, as to underſtand how things paſs in that kingdom. And therefore having begun, I pray you continue. This is not merely curioſity, for I have ever (I know not by what inſtinct) wiſhed well to that impoliſhed part of this crown. And ſo, with my very loving commendations, I remain.

LXXVI. To the earl of [a] NORTHAMPTON, deſiring him to preſent the *Advancement of learning* to the king.

It may pleaſe your good Lordſhip,

HAving finiſhed a work touching the advancement of learning, and dedicated the ſame to his ſacred majeſty, whom I dare avouch (if the records of time err not) to be the learnedeſt king that hath reigned; I was deſirous, in a kind of congruity, to preſent it by the learnedeſt counſellor in this kingdom; to the end that ſo good an argument, lighting upon ſo bad an author, might receive ſome reputation by the hands into which, and by which, it ſhould be delivered. And therefore, I make it my humble ſuit to your lordſhip, to preſent this mean but well-meant writing to his majeſty, and with it my humble and zealous duty; and alſo, my like humble requeſt of pardon, if I have too often taken his name in vain, not only in the dedication, but in the voucher of the authority of his ſpeeches and writings. And ſo I remain. 1605.

[a] The earl of Northampton was the ſecond ſon, and bore the name of that accompliſhed gentleman Henry Howard, earl of Surry, ſon and heir to the duke of Norfolk, who ſuffered under the ſeverity of king Henry's VIII's latter days; the one by death, the other by impriſonment. During great part of the reign ofqueen Elizabeth, while his family lay under the cloud, he apply'd himſelf to learning; and to what a degree he arrived, appears by a book he publiſhed in 1583, againſt the poiſon of ſuppoſed prophecies, dedicated to Sir Francis Walſingham; and from the eulogy that was generally given him, that he was the moſt learned among the noble, and the moſt noble among the learned. But in the king's reign his advancement was ſpeedy both in honours and riches. The ſervices he performed as a commiſſioner in making the peace between England and Spain, gave birth to a ſaying in thoſe times, (but with what truth I know not) that his houſe in the Strand, now called Northumberland houſe, was built by Spaniſh gold. He died in 1614, leaving behind him the memory of ſome real good works, and of ſome ſuppoſed ill ones; being ſuſpected of concealing his religion for many years, and of being privy to the untimely death of Sir Thomas Overbury. *Stephens.*

LXXVII. To Sir [b] THOMAS BODLEY, upon ſending his book of *Advancement of learning.*

SIR,

I Think no man may more truly ſay with the pſalm, *Multum incola fuit anima mea*, than myſelf; for, I do confeſs, ſince I was of any underſtanding, my mind hath in effect been abſent from that I have done: and in abſence are many errors, which I do willingly acknowledge; and, amongſt the reſt, this great one that led the reſt; that knowing myſelf by inward calling to be fitter to hold a book, than to play a part, I have led my life in civil cauſes; for which I was not very fit by nature, and more unfit by the preoccupation of my mind. Therefore calling myſelf home, I have now for a time enjoyed myſelf, whereof likewiſe I deſire to make the world partaker. My labours (if I may ſo term that which was the comfort of my other labours) I have dedicated to the king; deſirous, if there be any good in them, it may be as the fat of a ſacrifice, incenſed to his honour: and the ſecond copy I have ſent unto you, not only in good affection, but in a kind of congruity, in regard of your great and rare deſert of learning. For books are the ſhrines where the ſaint is, or is believed to be: And you having built an ark to ſave learning from deluge, deſerve propriety in any new inſtrument or engine, whereby learning ſhould be improved or advanced. 1605.

[b] Sir Thomas Bodley reſtored the publick library in Oxford, begun in the times of king Henry VI. by Humphry duke of Glouceſter; or was rather the founder of a new one, which now bears his name, and which hath placed him among the chief benefactors to that univerſity, and to the commonwealth of learning. He died in the entrance of the year 1613. *Stephens.*

LXXVIII. To the earl of [a] SALISBURY, upon ſending the *Advancement of learning*.

It may pleaſe your good Lordſhip,

I Preſent your lordſhip with a work of my vacant time, which if it had been more, the work had been better. It appertaineth to your lordſhip (beſides my particular reſpects) in ſome propriety, in regard you are a great governor in a province of learning. And (that which is more) you have added to your place affection towards learning; and to your affection judgment: of which the laſt I could be content were (for the time) leſs, that you might the leſs exquiſitely cenſure that which I offer unto you. But ſure I am, the argument is good, if it had lighted upon a good author. But I ſhall content myſelf to awake better ſpirits, like a bell-ringer, which is firſt up to call others to church. So with my humble deſire of your lordſhip's good acceptation, I remain. 1605.

[a] Sir Robert Cecil, created by king James lord Cecil, viſcount Cranburne, and earl of Saliſbury, was not only ſon to one of the greateſt ſtateſmen of his age, the lord Burleigh, but ſucceeded him in his places and abilities, and was one of the great ſupports of the queen's declining years. Yet the ill offices he was thought to perform towards the noble and popular earl of Eſſex, together with his conduct in ſome particulars in her ſucceſſor's reign, abated the luſtre of his character, which otherwiſe from his parts and prudence would have appeared very conſpicuous. After he had been long ſecretary of ſtate, ſome years lord treaſurer and chancellor of the univerſity of Cambridge, he died in May 1612, at Marlborough, in his return from the Bath; as by a diary of his ſickneſs, and the account given by Sir Robert Naunton, one of his retinue, appears; which I ſhould not mention, but that his enemies in their libels, which flew freely about, have ſuggeſted that he died on the Downs; which, if true, could be eſteemed at moſt but his misfortune. *Stephens.*

LXXIX To the [b] lord treaſurer BUCKHURST, on the ſame ſubject.

May it pleaſe your good Lordſhip,

I Have finiſhed a work touching the advancement or ſetting forward of learning, which I have dedicated to his majeſty, the moſt learned of a ſovereign, or temporal prince, that time hath known: and upon reaſon not unlike I humbly preſent one of the books to your lordſhip; not only as a chancellor of an univerſity, but as one that was excellently bred in all learning; which I have ever noted to ſhine in all your ſpeeches and behaviours: and therefore your lordſhip will yield a gracious aſpect to your firſt love, and take pleaſure in the adorning of that wherewith yourſelf are ſo much adorned. And ſo humbly deſiring your favourable acceptation thereof, with ſignification of humble duty, I remain. 1605.

[b] I ſhall draw this noble lord's character from Sir Robert Naunton's obſervations of the favourites of queen Elizabeth; and much in his own words: My lord of Buckhurſt was of the noble houſe of the Sackvilles, and of the queen's conſanguinity. He was a very fine gentleman of perſon and endowments both of art and nature, but without meaſure magnificent, till on the turn of his humour, and the allay that his years, and good counſels of the queen, etc. had wrought upon thoſe immoderate courſes of his youth, and that height of ſpirit inherent to his houſe; ſhe began to aſſiſt him in the reparation of that vaſt patrimony he had much waſted. After the honour ſhe had given him of lord Buckhurſt, and knight of the garter, ſhe procured him to be choſen chancellor of the univerſity of Oxford, upon the death of Sir Chriſtopher Hatton, and conſtituted him lord treaſurer, on the death of the lord Burleigh, which office he enjoy'd till April, 1608, dying then ſuddenly at the council-table; the king having ſome years before created him earl of Dorſet. He is alſo much commended for his happy vein in poetry, to which he was addicted in his youth; and for his elocution, and the excellencies of his pen; faculties that ran in the blood, as Sir Robert Naunton obſerves in his ſon Robert, and his grandſons Richard and Edward, ſucceſſive earls of Dorſet; and the laſt age had the ſatisfaction to ſee continued in the perſon of the right honourable Charles, earl of Dorſet and Middleſex. *Stephens.*

LXXX. To the lord chancellor [Sir T. EGERTON, lord Elleſmere] on the ſame ſubject.

May it pleaſe your good Lordſhip,

I Humbly preſent your lordſhip with a work, wherein as you have much commandment over the author, ſo your lordſhip hath great intereſt in the argument: for, to ſpeak without flattery, few have like uſe of learning, or like judg-

ment in learning, as I have obſerved in your lordſhip. And again, your lordſhip hath been a great planter of learning, not only in thoſe places in the church, which have been in your own gift, but alſo, in your commendatory vote, no man hath more conſtantly held *Detur digniori*: and therefore, both your lordſhip is beholding to learning, and learning beholding to you; which maketh me preſume with good aſſurance that your lordſhip will accept well of theſe my labours; the rather becauſe your lordſhip in private ſpeech hath often begun to me in expreſſing your admiration of his majeſty's learning, to whom I have dedicated this work; and whoſe virtue and perfection in that kind did chiefly move me to a work of this nature. And ſo with ſignification of my moſt humble duty and affection to your lordſhip, I remain. 1605.

LXXXI. To Mr. MATTHEW.

SIR,

I Perceive you have ſome time when you can be content to think of your friends; from whom ſince you have borrowed yourſelf, you do well (not paying the principal) to ſend the intereſt at ſix months day. The relation which here I ſend you incloſed, carries the truth of that which is publick; and tho' my little leiſure might have required a briefer, yet the matter would have endured and aſked a larger.

I have now at laſt taught that child to go, at the ſwadling whereof you were. My work touching the proficiency and advancement of learning, I have put into two books; whereof the former, which you ſaw, I can't but account as a page to the latter. I have now publiſhed them both; whereof I thought it a ſmall adventure to ſend you a copy, who have more right to it than any man, except biſhop Andrews, who was my inquiſitor.

The death of the late great judge concerned not me, becauſe the other was not removed. I write this in anſwer to your good wiſhes; which I return not as[a] flowers of Florence, but as you mean them; whom I conceive place can't alter, no more than time ſhall me, except it be for the better. 1605.

[a] Mr. Matthew wrote an elegy on the D. of Florence's felicity. See N° CI.

LXXXII. To Dr. PLAYFER, deſiring him to tranſlate the *Advancement* into Latin.

Mr. Dr. PLAFER,

A Great deſire will take a ſmall occaſion to hope and put in trial that which is deſired. It pleaſed you a good while ſince to expreſs unto me the good liking which you conceived of my book of the advancement of learning; and that more ſignificantly (as it ſeemed to me) than out of courteſy or civil reſpect. Myſelf, as I then took contentment in your approbation thereof, ſo I ſhould eſteem and acknowledge not only my contentment increaſed, but my labours advanced, if I might obtain your help in that nature which I deſire: Wherein, before I ſet down in plain terms my requeſt unto you, I will open myſelf, what it was which I chiefly ſought and propounded to myſelf in that work; that you may perceive that which I now deſire, to be purſuant thereupon. If I do not much err (for any judgment that a man maketh of his own doings, had need be ſpoken with a *Si nunquam fallat imago*) I have this opinion, that if I had ſought mine own commendation, it had been a much fitter courſe for me to have done as gardeners uſed to do, by taking their ſeed and ſlips, and rearing them firſt into plants, and ſo uttering them in pots, when they are in flower, and in their beſt ſtate. But for as much as my end was merit of the ſtate of learning (to my power) and not glory; and becauſe my purpoſe was rather to excite other mens wits, than to magnify mine own, I was deſirous to prevent the uncertainneſs of mine own life and times, by uttering rather ſeeds than plants: nay and farther (as the proverb is) by ſowing with the baſket, rather

Virg. Ecl. ii. 27.

than with the hand: wherefore, ſince I have only taken upon me to ring a bell to call other wits together (which is the meaneſt office) it cannot but be conſonant to my deſire, to have that bell heard as far as can be. And ſince they are but ſparks which can work but upon matter prepared, I have the more reaſon to wiſh that thoſe ſparks may fly abroad, that they may the better find and light upon thoſe minds and ſpirits which are apt to be kindled. And therefore the privateneſs of the language conſidered, wherein it is written, excluding ſo many readers; as, on the other ſide, the obſcurity of the argument in many parts of it excludeth many others; I muſt account it a ſecond birth of that work, if it might be tranſlated into Latin, without manifeſt loſs of the ſenſe and matter. For this purpoſe I could not repreſent to myſelf any man into whoſe hands I do more earneſtly deſire that work ſhould fall than yourſelf; for by that I have heard and read, I know no man a greater maſter in commanding words to ſerve matter. Nevertheleſs, I am not ignorant of the worth of your labours, whether ſuch as your place and profeſſion impoſeth, or ſuch as your own virtue may, upon your voluntary election, take in hand. But I can lay before you no other perſuaſions than either the work itſelf may affect you with; or the honour of his majeſty, to whom it is dedicated; or your particular inclination to myſelf; who, as I never took ſo much comfort in any labours of mine own, ſo I ſhall never acknowledge myſelf more obliged in any thing to the labours of another, than in that which ſhall aſſiſt it. Which your labour if I can by my place, profeſſion, means, friends, travel, work, deed, requite unto you, I ſhall eſteem myſelf ſo ſtraitly bound thereunto, as I ſhall be ever moſt ready both to take and ſeek occaſion of thankfulneſs. So leaving it, nevertheleſs *ſalva amicitia*, as reaſon is, to your good liking, I remain.

LXXXIII. To the Lord Chancellor, touching the *Hiſtory of Britain.*

It may pleaſe your good Lordſhip,

SOME late act of his majeſty, referred to ſome former ſpeech which I have heard from your lordſhip, bred in me a great deſire, and the ſtrength of deſire a boldneſs, to make an humble propoſition to your lordſhip, ſuch as in me can be no better than a * wiſh: but if your lordſhip ſhould apprehend it, it may take ſome good and worthy effect. The act I ſpeak of, is the order given by his majeſty for the erection of a tomb or monument for our late ſovereign queen Elizabeth[a]: wherein I may note much, but only this at this time, that as her majeſty did always right to his majeſty's hopes, ſo his highneſs doth in all things right to her memory; a very juſt and princely retribution. But from this occaſion, by a very eaſy aſcent, I paſſed farther, being put in mind, by this repreſentative of her perſon, of the more true and more vive repreſentation, which is of her life and government: for as ſtatues and pictures are dumb hiſtories, ſo hiſtories are ſpeaking pictures; wherein if my affection be not too great, or my reading too ſmall, I am of this opinion, that if Plutarch were alive to write lives by parallels, it would trouble him both for virtue and fortune, to find for her a parallel amongſt women. And though ſhe was of the paſſive ſex, yet her government was ſo active, as, in my ſimple opinion, it made more impreſſion upon the ſeveral ſtates of Europe, than it received from thence. But I confeſs unto your lordſhip I could not ſtay here, but went a little farther into the conſideration of the times which have paſſed ſince king Henry VIII; wherein I find the ſtrangeſt variety, that in ſo little number of ſucceſſions of any hereditary monarchy hath ever been known. The reign of a child; the offer of an uſurpation, though it were but as a diary ague; the reign of a lady married to a foreigner; and the reign of a lady ſolitary and unmarried: ſo that as it cometh to paſs in maſſy bodies, that they have certain trepidations and waverings before they fix and ſettle; ſo it ſeemeth that by the providence of God this monarchy (before

* Thought, *Matth.*

[a] The monument here ſpoken of was erected in K. Henry VII's chapel at Weſtminſter, in the year 1606.

(before it was to ſettle in his majeſty, and his generations, in which I hope it is now eſtabliſhed for ever) hath had theſe preluſive changes in theſe barren princes. Neither could I contain myſelf here (as it is eaſier for a man to multiply than to ſtay a wiſh) but calling to remembrance the unworthineſs of the hiſtory of England [a], in the main continuance thereof; and the partiality and obliquity of that of Scotland, in the lateſt and largeſt author [b] that I have ſeen; I conceived it would be honour for his majeſty, and a work very memorable, if this iſland of Great Britain, as it is now joined in monarchy for the ages to come, ſo it were joined in hiſtory for the times paſt; and that one juſt and compleat hiſtory were compiled of both nations. And if any man perhaps ſhould think it may refreſh the memory of former diſcords, he may ſatisfy himſelf with the verſe, *olim haec meminiſſe juvabit*; for the caſe being now altered, it is matter of comfort and gratulation to remember former troubles. Thus much, if it may pleaſe your lordſhip, is in the optative mood; and it is time that I did look a little into the potential; wherein the hope which I conceived was grounded upon three obſervations. The firſt, the nature of theſe times, which flouriſh in learning, both of art and language; which giveth hope not only that it may be done, but that it may be well done. Secondly, I do ſee that which all the world ſees in his majeſty, both a wonderful judgment in learning, and a ſingular affection towards learning, and works which are of the mind more than of the hand. For there cannot be the like honour ſought and found, in building of galleries [c], and planting of elms along high-ways, and in thoſe outward ornaments, wherein France is now ſo buſy (things rather of magnificence than of magnanimity) as there is in the uniting of ſtates [d], pacifying of controverſies [e], nouriſhing and augmenting of learning and arts, and the particular actions appertaining to theſe; of which kind Cicero judged truly, when he ſaid to Cæſar, *Quantum operibus tuis detrahet vetuſtas, tantum addet laudibus.* And laſtly, I call to mind, that your lordſhip at ſome times hath been pleaſed to expreſs unto me a great deſire, that ſomething of this nature ſhould be performed; anſwerable indeed to your other noble and worthy courſes and actions; joining and adding unto the great ſervices towards his majeſty (which have, in ſmall compaſs of time, been performed by your lordſhip) other great deſervings both of the church, and commonwealth, and particulars; ſo as the opinion of ſo great and wiſe a man doth ſeem to me a good warrant both of the poſſibility and worth of the matter. But all this while I aſſure myſelf, I cannot be miſtaken by your lordſhip, as if I ſought an office or employment for myſelf: for no man knows better than your lordſhip, that if there were in me any faculty thereunto, yet neither my courſe of life, nor profeſſion would

[a] The unworthineſs of the hiſtory of England hath been long complain'd of by ingenious men, both of this and other nations. Sir Francis Bacon hath expreſſed himſelf much to the ſame effect, tho' more at large in his ſecond book of the Advancement of learning *: where he carries this period of remarkable events ſomewhat higher than in this letter, beginning with the union of the roſes under Henry VII. and ending with the union of the kingdoms under K. James. A portion of time filled with ſo great and variable accidents both in church and ſtate, and ſince ſo well diſcovered to the view of the world, that had other parts the ſame performance, we ſhould not longer lie under any reproach of this kind. The reign of K. Henry VII. was written by our author ſoon after his retirement, with ſo great beauty of ſtyle, and wiſdom of obſervation, that nothing can be more entertaining; the truth of hiſtory not being diſguiſed with the falſe colours of romance. It was ſo acceptable a preſent to the P. of Wales, that when he became king, he commanded him to proceed with the reign of K. Henry VIII. But my lord Bacon meditating the hiſtory of nature, which he hardly lived to publiſh; his ill ſtate of health, and ſucceeding death, put an end to this and other noble deſigns: leaving the eccleſiaſtical and civil affairs of thoſe times to be related by the learned pens of Dr. Burnet (notwithſtanding the objections of the avowed enemies, and ſeeming friends to the reformation) and the lord Herbert of Cherbury; that I think there is not much of moment to be expected from a future hand. And for the Annals of Queen Elizabeth compiled by Mr. Camden, the eſteem of them is as univerſal as the language in which they are written. Nor muſt I forget in this place to take notice of two fair and large volumes lately publiſhed in French by Monſieur de Larrey; where building upon the foundations laid by theſe gentlemen, and ſome other memoirs, he hath not forgotten to do much honour to the Engliſh nation: beginning his hiſtory alſo with Henry VII. *Stephens.*

* vol. I. p. 32.

[b] This I take to be meant of Buchanan's hiſtory of Scotland; a book much admired by ſome, tho' cenſured by many, for his partiality in favour of the lords, againſt Mary queen of the Scots, and the regal power. In other reſpects, archbiſhop Spotiwood informs us that he penned it with ſuch judgment and eloquence, as no country can ſhew a better. *Stephens.*

[c] The magnificent gallery at the Louvre in Paris, built by Henry IV.

[d] The union of England and Scotland.

[e] The conference at Hampton-court held between the biſhops and puritans, as they were then called, ſoon after the king's coming to the crown of England, and where his majeſty was the moderator. *Stephens.*

would permit it: but becauſe there be ſo many * good painters both for hand and colours, it needeth but encouragement and inſtructions to give life unto it. So in all humbleneſs I conclude my preſenting unto your lordſhip this wiſh; which, if it periſh, it is but a loſs of that which is not. And ſo craving pardon that I have taken ſo much time from your lordſhip, I remain.

* Great maſters *Matt.*

LXXXIV. To the KING, touching the *Hiſtory of his times.*

It may pleaſe your Majeſty,

HEARING that your Majeſty is at leiſure to peruſe ſtory, a deſire took me to make an experiment what I could do in your Majeſty's times, which being but a † leaf or two, I pray your pardon, if I ſend it for your recreation; conſidering that love muſt creep where it cannot go. But to this I add theſe petitions: Firſt, that if your Majeſty do diſlike any thing, you would conceive I can amend it upon your leaſt beck. Next, that if I have not ſpoken of your Majeſty encomiaſtically, your Majeſty would be pleaſed only to aſcribe it to the law of an hiſtory; which doth not clutter together praiſes upon the firſt mention of a name, but rather diſperſeth and weaveth them through the whole narrative. And as for the proper place of commemoration (which is in the period of life) I pray God I may never live to write it. Thirdly, that the reaſon why I preſumed to think of this oblation, was becauſe whatſoever my diſability be, yet I ſhall have that advantage which almoſt no writer of hiſtory hath had; in that I ſhall write of times not only ſince I could remember, but ſince I could obſerve. And laſtly, that it is only for your Majeſty's reading.

† See vol. II. p. 360.

LXXXV. A Letter of expoſtulation, to Sir EDWARD COKE, attorney-general.

Mr. Attorney,

I Thought beſt, once for all, to let you know in plainneſs what I find of you, and what you ſhall find of me. You take to yourſelf a liberty to diſgrace and diſable my law, my experience, my diſcretion. What it pleaſeth you, I pray, think of me: I am one that knows both mine own wants and other mens; and it may be, perchance, that mine mend, when others ſtand at a ſtay. And ſurely I may not endure, in publick place, to be wronged without repelling the ſame to my beſt advantage to right myſelf. You are great, and therefore have the more enviers, which would be glad to have you paid at another's coſt. Since the time I miſſed the ſolicitor's place (the rather I think by your means) I cannot expect that you and I ſhall ever ſerve as attorney and ſolicitor together; but either to ſerve with another upon your remove, or to ſtep into ſome other courſe: ſo as I am more free than ever I was from any occaſion of unworthy conforming myſelf to you, more than general good manners, or your particular good uſage ſhall provoke; and if you had not been ſhort-ſighted in your own fortune (as I think) you might have had more uſe of me. But that tide is paſſed. I write not this to ſhew my friends what a brave letter I have written to Mr. Attorney; I have none of thoſe humours: but that I have written is to a good end, that is, to the more decent carriage of my maſter's ſervice, and to our particular better underſtanding one of another. This letter, if it ſhall be anſwered by you in deed, and not in word, I ſuppoſe it will not be worſe for us both; elſe it is but a few lines loſt, which for a much ſmaller matter I would have adventured. So this being to yourſelf, I for my part reſt.

LXXXVI. To the earl of SALISBURY, concerning the ſolicitor's place.

May it pleaſe your Lordſhip,

I Am not privy to myſelf of any ſuch ill deſerving towards your lordſhip, as that I ſhould think it an impudent thing to be a ſuitor for your favour in a reaſonable matter; your lordſhip being to me as (with your good favour) you cannot ceaſe to be: but rather it were a ſimple and arrogant part in me to forbear it.

It is thought Mr. Attorney ſhall be chief juſtice of the common pleas; in caſe Mr. Solicitor riſe, I would be glad now at laſt to be ſolicitor; chiefly becauſe I think it will increaſe my practice, wherein God bleſſing me a few years, I may mend my ſtate, and ſo after fall to my ſtudies and eaſe; whereof one is requiſite for my body, and the other ſerveth for my mind: wherein if I ſhall find your lordſhip's favour, I ſhall be more happy than I have been, which may make me alſo more wiſe. I have ſmall ſtore of means about the king, and to ſue myſelf is not fit; and therefore I ſhall leave it to God, his majeſty, and your lordſhip, for I muſt ſtill be next the door. I thank God, in theſe tranſitory things I am well reſolved. So beſeeching your lordſhip not to think this letter the leſs humble, becauſe it is plain, I reſt, etc.

FR. BACON.

LXXXVII. Another Letter to the earl of SALISBURY, touching the ſolicitor's place.

It may pleaſe your good Lordſhip,

I Am not ignorant how mean a thing I ſtand for, in deſiring to come into the ſolicitor's place: for I know well, it is not the thing it hath been; time having wrought alteration both in the profeſſion, and in that ſpecial place. Yet becauſe, I think, it will increaſe my practice, and that it may ſatisfy my friends; and becauſe I have been voiced to it, I would be glad it were done. Wherein I may ſay to your lordſhip, in the confidence of your poor kinſman, and of a man by you advanced, *Tu idem fer opem, qui ſpem dediſti*: for, I am ſure, it was not poſſible for a man living to have received from another, more ſignificant and comfortable words of hope; your lordſhip being pleaſed to tell me, during the courſe of my laſt ſervice, that you would raiſe me; and that when you had reſolved to raiſe a man, you were more careful of him than himſelf; and that what you had done for me in my marriage, was a benefit to me, but of no uſe to your lordſhip; and therefore I might aſſure myſelf, you would not leave me there; with many like ſpeeches, which I know my duty too well, to take any other hold of than the hold of a thankful remembrance. And I acknowledge, and all the world knoweth, that your lordſhip is no dealer of holy water, but noble and real; and, on my part, I am of a ſure ground, that I have committed nothing that may deſerve alteration. And therefore my hope is, your lordſhip will finiſh a good work, and conſider, that time groweth precious with me, and that I am now *in vergentibus annis*. And although I know that your fortune is not to need an hundred ſuch as I am, yet I ſhall be ever ready to give you my firſt and beſt fruits; and to ſupply (as much as in me lieth) worthineſs by thankfulneſs.

LXXXVIII.

LXXXVIII. To the lord Chancellor, concerning the ſolicitor's place.

It may pleaſe your good Lordſhip,

AS I conceived it to be a reſolution, both with his majeſty, and among your lordſhips of his council, that I ſhould be placed ſolicitor, and the ſolicitor to be removed to be the king's ſerjeant: ſo I moſt thankfully acknowledge your lordſhip's furtherance and forwardneſs therein; your lordſhip being the man that firſt deviſed the mean: Wherefore my humble requeſt to your lordſhip is, that you would ſet in with ſome ſtrength to finiſh this your work; which, I aſſure your lordſhip, I deſire the rather, becauſe being placed, I hope for many favours at laſt to be able to do you ſome better ſervice. For as I am, your lordſhip cannot uſe me; nor ſcarcely indeed know me. Not that I vainly think, I ſhall be able to do any great matters, but certainly it will frame me to uſe a more induſtrious obſervance and application to ſuch, as I honour ſo much as I do your lordſhip; and not (I hope) without ſome good offices, which may now and then deſerve your thanks. And herewithal (good my lord) I humbly pray your lordſhip to conſider, that time groweth precious with me, and that a married man is ſeven years elder in his thoughts the firſt day: And therefore what a diſcomfortable thing is it for me to be unſettled ſtill? Certainly, were it not that I think myſelf born to do my ſovereign ſervice, and therefore in that ſtation I will live and die; otherwiſe, for mine own private comfort, it were better for me that the king ſhould blot me out of his book; or that I ſhould turn my courſe to endeavour to ſerve in ſome other kind, than for me to ſtand thus at a ſtop; and to have that little reputation, which by my induſtry I gather, to be ſcatter'd and taken away by continual diſgraces, every new man coming above me. Sure I am, I ſhall never have fairer promiſes and words from all your lordſhips. For I know not what my ſervices are (ſaving that your lordſhips told me they were good) and I would believe you in a much greater matter. Were it nothing elſe, I hope the modeſty of my ſuit deſerveth ſomewhat; for I know well the ſolicitor's place is not as your lordſhip left it; time working alteration, ſomewhat in the profeſſion, much more in that ſpecial place. And were it not to ſatisfy my wife's friends, and to get myſelf out of being a common gaze and a ſpeech, I proteſt before God I would never ſpeak word for it. But to conclude, as my honourable lady your wife was ſome mean to make me to change the name of another; ſo if it pleaſe you to help me to change mine own name, I can be but more and more bounden to you: And I am much deceived, if your lordſhip find not the king well inclined, and my lord of Salisbury forward and affectionate.

LXXXIX. To my Lady PACKINGTON, in anſwer to a meſſage by her ſent.

MADAM,

YOU ſhall with right good will be made acquainted with any thing that concerneth your daughters, if you bear a mind of love and concord; otherwiſe you muſt be content to be a ſtranger unto us: For I may not be ſo unwiſe as to ſuffer you to be an author or occaſion of diſſenſion between your daughters and their huſbands, having ſeen ſo much miſery of that kind in yourſelf.

And above all things I will turn back your kindneſs, in which you ſay, you will receive my wife if ſhe be caſt off: for it is much more likely we have occaſion to receive you being caſt off, if you remember what is paſſed. But it is time to make an end of theſe follies: and you ſhall at this time pardon me this one fault of writing to you; for I mean to do it no more till you uſe me and reſpect me as you ought. So wiſhing you better than it ſeemeth you will draw upon yourſelf, I reſt,

Yours.

XC. To the KING, touching the ſolicitor's place.

HOW honeſtly ready I have been (moſt gracious ſovereign) to do your Majeſty humble ſervice, to the beſt of my power, and in a manner beyond my power (as I now ſtand) I am not ſo unfortunate but your Majeſty knoweth. For both in the commiſſion of union (the labour whereof, for men of my profeſſion, reſted moſt upon my hand) and this laſt parliament, in the bill of the ſubſidy, both body and preamble; in the bill of attainders, both Treſham and the reſt; in the matter of purveyance; in the eccleſiaſtical petitions; in the grievances; and the like; as I was ever careful (and not without good ſucceſs) ſometimes to put forward that which was good, ſometimes to keep back that which was not ſo good; ſo your Majeſty was pleaſed kindly to accept of my ſervices, and to ſay to me, ſuch conflicts were the wars of peace, and ſuch victories the victories of peace; and therefore ſuch ſervants that obtained them were by kings, that reign in peace, no leſs to be eſteemed, than ſervices of commanders in the wars. In all which nevertheleſs I can challenge to myſelf no ſufficiency, but that I was diligent and reaſonably happy to execute thoſe directions, which I received either immediately from your royal mouth, or from my lord of Saliſbury: at which time it pleaſed your Majeſty alſo to promiſe and aſſure me, that upon the remove of the then attorney I ſhould not be forgotten, but brought into ordinary place. And this was after confirmed to me, by many of my lords, and towards the end of the laſt term, the manner alſo in particular was ſpoken of; that is, that Mr. Solicitor ſhould be made your Majeſty's ſerjeant, and I ſolicitor; for ſo it was thought beſt to ſort with both our gifts and faculties for the good of your ſervice: and of this reſolution both court and country took knowledge. Neither was this any invention or project of mine own; but moved from my lords, and I think, firſt from my lord Chancellor; whereupon reſting, your Majeſty well knoweth I never opened my mouth for the greater place; though I am ſure I had two circumſtances, that Mr Attorney, that now is, could not alledge: the one, nine years ſervice of the crown; the other the being couſin germain to the lord of Salisbury, whom your Majeſty eſteemeth and truſteth ſo much. But for the leſs place, I conceived it was meant me. But after that Mr. Attorney Hobart was placed, I heard no more of my preferment; but it ſeemed to be at a ſtop, to my great diſgrace and diſcouragement. For, gracious ſovereign, if ſtill, when the waters are ſtirred, another ſhall be put in before me, your Majeſty had need work a miracle, or elſe I ſhall be ſtill a lame man to do your Majeſty ſervice. And therefore my moſt humble ſuit to your Majeſty is; that this, which ſeemed to me intended, may ſpeedily be performed: And I hope, my former ſervice ſhall be but as beginnings to better, when I am better ſtrengthened: For, ſure I am, no man's heart is fuller (I ſay not but many may have greater hearts, but I ſay, not fuller) of love and duty towards your Majeſty and your children; as, I hope, time will manifeſt againſt envy and detraction, if any be. To conclude, I moſt humbly crave pardon for my boldneſs, and reſt.

XCI. To the earl of SALISBURY, upon a new-year's tide.

It may pleaſe your good Lordſhip,

HAVING no gift to preſent you with in any degree proportionable to my mind, I deſire nevertheleſs to take the advantage of a ceremony to expreſs myſelf to your lordſhip; it being the firſt time I could make the like acknowledgement, when I ſtood out of the perſon of a ſuitor: wherefore I moſt humbly pray your lordſhip to think of me, that, now it hath pleaſed you, by many effectual and great benefits, to add the aſſurance and comfort of your love and favour to that precedent diſpoſition, which was in me, to admire your virtue and merit; I do eſteem whatſoever I have or may have in this world, but as

traſh, in compariſon of having the honour and happineſs to be a near and well accepted kinſman to ſo rare and worthy a counſellor, governour, and patriot: For having been a ſtudious, if not a curious obſerver of antiquities of virtue, as of late pieces, I forbear to ſay to your lordſhip what I find and conceive; but to any other I would think to make myſelf believed. But not to be tedious in that which may have the ſhew of a compliment, I can but wiſh your lordſhip many happy years, many more than your father had; even ſo many more, as we may need you more. So I remain.

XCII. To Mr. MATTHEW, impriſoned for religion.

Mr. MATTHEW,

DO not think me forgetful or altered towards you; but if I ſhould ſay, I could do you any good, I ſhould make my power more than it is. I do hear that which I am right ſorry for; that you grow more impatient and buſy than at firſt; which maketh me exceedingly fear the iſſue of that which ſeemeth not to ſtand at a ſtay. I myſelf am out of doubt, that you have been miſerably abuſed, when you were firſt ſeduced; but that which I take in compaſſion, others may take in ſeverity. I pray God, that underſtandeth us all better than we underſtand one another, contain you (even as I hope he will) at the leaſt, within the bounds of loyalty to his majeſty, and natural piety towards your country. And I intreat you much, ſometimes to meditate upon the extreme effects of ſuperſtition in this laſt powder treaſon; fit to be tabled and pictured in the chambers of meditation, as another hell above the ground; and well juſtifying the cenſure of the heathen, that ſuperſtition is far worſe than atheiſm; by how much it is leſs evil to have no opinion of God at all, than ſuch as is impious towards his divine majeſty and goodneſs. Good Mr. Matthew, receive yourſelf back from theſe courſes of perdition. Willing to have written a great deal more, I continue, etc.

XCIII. To Mr. MATTHEW.

SIR,

TWO letters of mine are now already walking towards you; but ſo that we might meet, it were no matter though our letters ſhou'd loſe their way. I make a ſhift in the mean time to be glad of your approaches, and would be more glad to be an agent for your preſence, who have been a patient by your abſence. If your body by indiſpoſition make you acknowledge the healthful air of your native country; much more do I aſſure myſelf, that you continue to have your mind no way eſtranged. And as my truſt with the ſtate is above ſuſpicion, ſo my knowledge both of your loyalty and honeſt nature will ever make me ſhew myſelf your faithful friend without ſcruple. You have reaſon to commend that gentleman to me, by whom you ſent your laſt, although his having travelled ſo long amongſt the ſadder nations of the world make him much the leſs eaſy upon ſmall acquaintance to be underſtood. I have ſent you ſome copies of my book of the *Advancement*, which you deſired; and a little work of my recreation, which you deſired not. My *Inſtauration* I reſerve for our conference; it ſleeps not. Thoſe works of the *Alphabet* are in my opinion of leſs uſe to you where you are now, than at Paris; and therefore I conceived, that you had ſent me a kind of tacit countermand of your former requeſt. But in regard that ſome friends of yours have ſtill inſiſted here, I ſend them to you; and for my part, I value your own reading more than your publiſhing them to others. Thus, in extreme haſte, I have ſcribbled to you I know not what, which therefore is the leſs affected, and for that very reaſon will not be eſteemed the leſs by you.

XCIV.

XCIV. To Sir GEORGE CAREW[a], on ſending him the treatiſe *In felicem memoriam Elizabethae.*

BEING aſked a queſtion by this bearer, an old ſervant of my brother Anthony Bacon's, whether I would command him any thing into France; and being at better leiſure than I would, in regard of ſickneſs, I began to remember that neither your buſineſs nor mine (though great and continual) can be, upon an exact account, any juſt occaſion why ſo much good-will as hath paſſed between us ſhould be ſo much diſcontinued as it hath been. And therefore, becauſe one muſt begin, I thought to provoke your remembrance of me by a letter: And thinking to fill it with ſomewhat beſides ſalutations, it came to my mind, that this laſt ſummer vacation, by occaſion of a factious book that endeavoured to verify *Miſera Fœmina* (the addition of the pope's bull) upon queen Elizabeth, I did write a few lines in her memorial, which I thought you would be pleaſed to read, both for the argument, and becauſe you were wont to bear affection to my pen. *Verum, ut aliud ex alio*, if it came handſomely to paſs, I would be glad the preſident De Thou (who hath written an hiſtory, as you know, of that fame and diligence) ſaw it; chiefly becauſe I know not whether it may not ſerve him for ſome uſe in his ſtory; wherein I would be glad he did right to the truth, and to the memory of that lady, as I perceive by that he hath already written he is well inclined to do. I would be glad alſo, it were ſome occaſion (ſuch as abſence may permit) of ſome acquaintance or mutual notice between us. For though he hath many ways the precedence (chiefly in worth) yet this is common to us both, that we ſerve our ſovereigns in places of law eminent: And not ourſelves only, but that our fathers did ſo before us. And laſtly, that both of us love learning and liberal ſciences, which was ever a bond of friendſhip in the greateſt diſtance of places. But of this I make no farther requeſt, than your own occaſions and reſpects (to me unknown) may further or limit; my principal purpoſe being to ſalute you, and to ſend you this token: Whereunto I will add my very kind commendations to my lady; and ſo commit you both to God's holy protection.

[a] Sir George Carew of Cornwall was maſter in chancery in the time of Queen Elizabeth; and in 1597 ſent ambaſſador into Poland; and in 1606 went unto the court of France with the like character. After about three years continuance, he was recalled by the King to make uſe of his ſervices at home; but he ſurviv'd not many years. M. De Thou in a letter to Mr. Camden in 1613, very much laments his death; as loſing a friendſhip he much valued, and an aſſiſtant in the proſecution of his hiſtory: having receiv'd helps from him in that part which relates to the diſſenſions between the Poles and the Swedes in the year 1598, as appears before the contents of book CXXI. *Stephens.*

XCV. To the KING, upon preſenting the *Diſcourſe touching the plantation of Ireland.*

It may pleaſe your excellent Majeſty,

I KNow not better how to expreſs my good wiſhes of a new-year to your Majeſty, than by this little book, which in all humbleneſs I ſend you. The ſtyle is a ſtyle of buſineſs, rather than curious or elaborate. And herein I was encouraged by my experience of your Majeſty's former grace, in accepting of the like poor field fruits touching the union. And certainly I reckon this action as a ſecond brother to the union. For I aſſure myſelf that England, Scotland and Ireland well united, is ſuch a trefoil as no prince except yourſelf (who are the worthieſt) weareth in his crown; *Si potentia reducatur in actum.* I know well, that for me to beat my brains about theſe things, they be *majora quam pro fortuna*; but yet they be *minora quam pro ſtudio ac voluntate.* For as I do yet bear an extreme zeal to the memory of my old miſtreſs queen Elizabeth, to whom I was rather bound for her truſt than her favour; ſo I muſt acknowledge myſelf more bound to your Majeſty both for truſt and favour; whereof I will never deceive the one, as I can never deſerve the other. And ſo, in all humbleneſs kiſſing your Majeſty's ſacred hand, I remain.

XCVI. To the Biſhop of ELY, upon ſending his writing, entitled, *Cogitata et Viſa.*

My very good Lord,

NOW your lordſhip hath been ſo long in the church and the palace, diſputing between Kings and Popes [b]; methinks you ſhould take pleaſure to look into the field, and refreſh your mind with ſome matter of philoſophy; though that ſcience be now through age waxed a child again, and left to boys and young men. And becauſe you were wont to make me believe you took liking to my writings, I ſend you ſome of this vacation's fruits; and thus much more of my mind and purpoſe. I haſten not to publiſh; periſhing I would prevent; and I am forced to reſpect as well my times as the matter. For with me it is thus; and, I think, with all men in my caſe: If I bind myſelf to an argument, it loadeth my mind; but if I rid my mind of the preſent cogitation, it is rather a recreation. This hath put me into theſe miſcellanies; which I purpoſe to ſuppreſs, if God give me leave to write a juſt and perfect volume of philoſophy, which I go on with, though ſlowly. I ſend not your lordſhip too much, leſt it may glut you. Now let me tell you what my deſire is: if your lordſhip be ſo good now, as when you were the good dean of Weſtminſter, my requeſt to you is, that not by pricks, but by notes, you would mark unto me whatſoever ſhall ſeem unto you either not current in the ſtyle, or harſh to credit and opinion, or inconvenient for the perſon of the writer; for no man can be judge and party: and when our minds judge by reflection on ourſelves, they are more ſubject to error. And though, for the matter itſelf, my judgment be in ſome things fixed, and not acceſſible by any man's judgment that goeth not my way; yet even in thoſe things, the admonition of a friend may make

[b] The King and kingdom being exaſperated by the gun-powder treaſon, thought it neceſſary to make ſome more effectual laws to diſtinguiſh between thoſe papiſts that paid due obedience to the King, and thoſe that did not. For which end, in the parliament which met upon the memorable fifth of November, 1605, a new oath of allegiance was framed; declaring that the pope, etc. had no power to depoſe kings, abſolve their ſubjects, or diſpoſe of their kingdoms, etc. The court of Rome, jealous of loſing an authority they had been many years aſſuming, and eſpecially perceiving that many papiſts ſubmitted to the oath, as not intrenching upon matters of faith, ſeverely inhibited them from taking the ſame, by two briefs, the one quickly ſucceeding the other. The King, on the other hand eſteeming it a point that nearly concerned him, had recourſe to thoſe arms he could beſt manage, and encounter'd the briefs by a premonition directed to all chriſtian princes; exhorting them to eſpouſe the common quarrel. Cardinal Bellarmine, who, by virtue of his title, thought himſelf almoſt equal to princes, and by his great learning much ſuperior, enters the liſts with the King. The ſeconds coming in on both ſides, no man was thought fitter to engage this remarkable antagoniſt than that great and renowned prelate in learning and ſanctity, Dr. Andrews, then biſhop of Ely, and after of Wincheſter. Neither were the reformed of the French church idle ſpectators; as Monſieur du Moulin, and Monſieur du Pleſſis Mornay: This laſt publiſh'd a book at Saumur in 1611, entitled, The myſtery of iniquity, &c. ſhewing by what degrees the biſhops of Rome had raiſed themſelves to their preſent grandeur, aſſerting the right of ſovereign princes againſt the poſitions of the cardinals Bellarmine and Baronius: The French edition whereof he dedicated to Lewis the thirteenth, and the Latin to King James. This laſt performance was preſented to King James, with a letter exhorting him, "de quitter d'oreſenavant la plume, pour aller eſpée à la "main deſnicher l'antichriſt hors de ſa fortereſſe:" to give over waging a war with his pen, and to deſtroy the papal power with his ſword; which he excites the King to attempt in the concluſion of his dedication, with ſo much life, that I ſhall crave the liberty to inſert part of his own words, in order to declare the ſpirit and zeal of a gentleman, who for his valour and conduct in war, his judgment in council, his dexterity in diſpatches, and his firmneſs and conſtancy in religion (in the defence of which, hand, and tongue, and pen were employ'd) is far above all the titles of honour that can be given.

Hanc tu, Rex potentiſſime, laudem, hanc lauream, abſit ut tibi praeripi patiaris; cuiquam alii ſervatam velis; non ſanguine, non vita, non carioribus caeteris redemptam malis. At tu, Jehova Deus, cujus res, cujus gloria, hic proprie agitur; cujus abſque ope fruſtra ſint vota, ſuſpiria, molimina noſtra; evigila, exſurge, robur indue, juſtitiam ut loricam. Voca ſervum tuum per nomen ſuum, prehende dexteram Unctii tui, ambula ante faciem ejus; complanentur valles, ſubſidant montes, conſternantur fluvii, pateant januae, conterantur vectes, contremiſcant populi, corruat Jericho illa in ſpiritu oris tui, in conſpectu ejus. Ego ſexagenario licet jam major, lateri tunc ipſius haeream indivulſus; inter anguſta, inter aſpera Alpium ſenectam exuam; inter principia proelium miſceam; inter triumphos praecinente angelo Cecidit *illud congeminem; ſanctae huic laetitiae totus immergar, aeternae contiguus immoriar raptus.*

But this was an enterpriſe ſuited to the warlike genius of Du Pleſſis, great maſter of Henry the fourth, and not to the peaceable ſpirit of King James. Beſides the King, in his anſwer of the 20th of October, 1611, (after he had excuſed his long ſilence, and very much commended this author in the deſign of his book, and as freely called the pope antichriſt, and Rome Babylon) conceives that neither the Scriptures, the doctrine nor example of the primitive church, would ſufficiently juſtify an offenſive war, undertaken purely for religion; could he in prudence expect any ſucceſs in ſuch an attempt.

make me expreſs myſelf diverſly. I would have come to your lordſhip, but that I am haſtening to my houſe in the country: and ſo I commend your lordſhip to God's goodneſs.

XCVII. To Sir THOMAS BODELEY, after he had imparted to him a writing, entitled, *Cogitata et Viſa.*

SIR,

IN reſpect of my going down to my houſe in the country, I ſhall have miſs of my papers, which I pray you therefore to return unto me. You are, I bear you witneſs, ſlothful, and you help me nothing; ſo as I am half in conceit, that you affect not the argument: for myſelf, I know well, you love and affect. I can ſay no more to you, but *non canimus ſurdis, reſpondent omnia ſylvae.* If you be not of the lodgings chalk'd up (whereof I ſpeak in my preface) I am but to paſs by your door. But if I had you a fortnight at Gorhambury, I would make you tell me another tale; or elſe I would add a cogitation againſt libraries, and be revenged on you that way. I pray you ſend me ſome good news of Sir Thomas Smith; and commend me very kindly to him. So I reſt.

XCVIII. Sir THOMAS BODELEY's letter to Sir FRANCIS BACON, about his *Cogitata et Viſa*, wherein he declareth his opinion freely touching the ſame.

SIR,

AS ſoon as the term was ended, ſuppoſing your leiſure was more than before, I was coming to thank you two or three times, rather chuſing to do it by word than by letter: but I was ſtill diſappointed of my purpoſe, as I am at this preſent upon an urgent occaſion, which doth tie me faſt to Fulham, and hath now made me determine to impart my mind in writing.

I think you know I have read your *Cogitata et Viſa*, which I proteſt I have done with great deſire, reputing it a token of your ſingular love, that you joined me with thoſe your chiefeſt friends, to whom you would commend the firſt peruſal of your draught: for which, I pray you, give me leave to ſay but this unto you:

Firſt, that if the depth of my affection to your perſon and ſpirit, to your works and your words, and to all your abilities, were as highly to be valued, as your affection is to me, it might walk with yours arm in arm, and claim your love by juſt deſert. But there can be no compariſon where our ſtates are ſo uneven, and our means to demonſtrate our affections ſo different: inſomuch as for my own, I muſt leave it to be prized in the nature that it is; and you ſhall evermore find it moſt addicted to your worth.

As touching the ſubject of your book, you have ſet a-foot ſo many rare and noble ſpeculations, as I cannot chuſe but wonder (and I ſhall wonder at it ever) that, your expence of time conſidered in your publick profeſſion, which hath in a manner no acquaintance with ſcholarſhip or learning, you ſhould have culled out the quinteſſence, and ſucked up the ſap of the chiefeſt kind of learning.

For howſoever in ſome points you do vary altogether from that which is, and hath been ever, the received doctrine of our ſchools, and was always by the wiſeſt, as ſtill they have been deemed, of all nations and ages adjudged the trueſt; yet it is apparent, that in thoſe very points, and in all your propoſals and plots in that book, you ſhew yourſelf a maſter workman.

For myſelf, I muſt confeſs, and I ſpeak it *ingenuè*, that for the matter of learning, I am not worthy to be reckoned in the number of ſmatterers.

And yet becauſe it may ſeem, that being willing to communicate your treatiſe with your friends, you are likewiſe willing to liſten to whatſoever I or others can except againſt it; I muſt deliver unto you for my private opinion, that I am one of that crew that ſay there is, and we profeſs, a far greater holdfaſt of certainty in our ſciences, than you by your diſcourſe will ſeem to acknowledge.

For whereas, firſt, you do object the ill ſucceſs and errors of practitioners in phyſick, you know as well they do proceed of the patient's unrulineſs, for not one of a hundred doth obey his phyſician in obſerving his cautels; or by miſinformation of their own indiſpoſitions, for few are able in this kind to explicate themſelves; or by reaſon their diſeaſes are by nature incurable, which is incident, you know, to many ſorts of maladies; or for ſome other hidden cauſe which cannot be diſcovered by courſe of conjecture. Howbeit, I am full of this belief, that as phyſick is miniſtred now-a-days by phyſicians, it is much to be aſcribed to their negligence or ignorance, or other touch of imperfection, that they ſpeed no better in their practice: for few are found of that profeſſion ſo well inſtructed in their art, as they might by the precepts which their art doth afford; which though it be defective in regard of ſuch perfection, yet for certain it doth flouriſh with admirable remedies, ſuch as tract of time hath taught by experimental events, and are the open highway to that principal knowledge that you recommend.

As for alchemy and magick, ſome concluſions they have that are worthy the preſerving; but all their ſkill is ſo accompanied with ſubtleties and guiles, as both the crafts and craft-maſters are not only deſpiſed, but named with deriſion. Whereupon to make good your principal aſſertion, methinks you ſhould have drawn your examples from that which is taught in the liberal ſciences, not by picking out caſes that happen very ſeldom, and may by all confeſſion be ſubject to reproof; but by controlling the generals, and grounds, and eminent poſitions, and aphoriſms, which the greateſt artiſts and philoſophers have from time to time defended.

For it goeth for current amongſt all men of learning, that thoſe kind of arts which clerks in times paſt did term quadrivials, confirm their propoſitions by infallible demonſtrations.

And likewiſe in the trivials ſuch leſſons and directions are delivered unto us, as will effect very near, or as much altogether, as every faculty doth promiſe. Now in caſe we ſhould concur to do as you adviſe, which is, to renounce our common notions, and cancel all our theorems, axioms, rules, and tenets, and ſo to come babes *ad regnum naturae*, as we are willed by Scriptures to come *ad regnum coelorum*; there is nothing more certain in my underſtanding, than that it would inſtantly bring us to barbariſm, and, after many thouſand years, leave us more unprovided of theorical furniture than we are at this preſent: for that were indeed to become very babes, or *tabula raſa*, when we ſhall leave no impreſſion of any former principles, but be driven to begin the world again, and to travel by trials of axioms and ſenſe (which are your proofs by particulars) what to place *in intellectu*, for our general conceptions; it being a maxim of all mens approving, *In intellectu nihil eſſe, quod non prius fuit in ſenſu*; and ſo in appearance it would befal us, that till Plato's year be come about, our inſight in learning would be of leſs reckoning than now it is accounted.

As for that which you inculcate, of a knowledge more excellent than now is among us, which experience might produce, if we would but eſſay to extract it out of nature by particular probations, it is no more upon the matter, but to incite us unto that, which without inſtigation by a natural inſtinct men will practiſe of themſelves: for it cannot in reaſon be otherwiſe thought, but that there are infinite numbers in all parts of the world (for we may not in this caſe confine our cogitations within the bounds of Europe) which embrace the courſe that you purpoſe, with all the diligence and care that ability can perform; for every man is born with an appetite of knowledge, wherewith he cannot be ſo glutted, but ſtill, as in a dropſy, thirſt after more.

But

But yet why they ſhould hearken to any ſuch perſuaſion, as wholly to aboliſh thoſe ſettled opinions and general theorems, to which they attained by their own and their anceſtors experience, I ſee nothing yet alledged to induce me to think it.

Moreover, I may ſpeak, as I ſhould ſuppoſe with good probability, that if we ſhould make a mental ſurvey what is like to be effected all the world over, thoſe five or ſix inventions which you have ſelected, and imagine to be but of modern ſtanding, would make but a ſlender ſhew amongſt ſo many hundreds of all kinds of natures, which are daily brought to light by the enforcement of wit, or caſual events, and may be compared, or partly preferred above thoſe that you have named.

But were it ſo here that all were admitted, that you can require, for the augmentation of our knowledge; and that all our theorems and general poſitions were utterly extinguiſhed with a new ſubſtitution of others in their places, what hope may we have of any benefit of learning by this alteration?

Aſſuredly, as ſoon as the new are brought with their additions *ad ἀκμήν*, by the inventors and their followers, by an interchangeable courſe of natural things they will fall by degrees to be buried in oblivion, and ſo on continuance to periſh out-right; and that perchance upon the like to your preſent pretences, by propoſal of ſome means to advance all our knowledge to an higher pitch of perfectneſs: for ſtill the ſame defects that antiquity found, will reſide in mankind.

And therefore, other iſſues of their actions, devices, and ſtudies are not to be expected, than is apparent by records were in former times obſerved.

I remember here a note which Paterculus made of the incomparable wits of the Grecians and Romans in their flouriſhing ſtate, that there might be this reaſon of their notable downfal in their iſſue that came after; becauſe by nature *Quod ſummo ſtudio petitum eſt, aſcendit in ſummum, difficiliſque in perfecto mora eſt*; inſomuch that men perceiving that they could go no farther, being come to the top, they turned back again of their own accord, forſaking thoſe ſtudies that are moſt in requeſt, and betaking themſelves to new endeavours, as if the thing that they ſought had been by prevention ſurpriſed by others.

So it fared in particular with the eloquence of that age, that when their ſucceſſors found that hardly they could equal, by no means excel their predeceſſors, they began to neglect the ſtudy thereof, and both to write and ſpeak for many hundred years in a ruſtical manner; till this later revolution brought the wheel about again, by inflaming gallant ſpirits to give the onſet afreſh, with ſtraining and ſtriving to climb unto the top and height of perfection, not in that gift only, but in every other ſkill in any part of learning.

For I do not hold it an erroneous conceit to think of every ſcience, that as now they are profeſſed, ſo they have been before in all precedent ages, though not alike in all places, nor at all times alike in one and the ſame place, but according to the changings and twinings of times, with a more exact and plain, or with a more rude and obſcure kind of teaching.

And if the queſtion ſhould be aſked, what proof I have of it, I have the doctrine of Ariſtotle, and of the deepeſt learned clerks, of whom we have any means to take any notice, that as there is of other things, ſo there is of ſciences *ortus et interitus*, which is alſo the meaning, if I ſhould expound it, of *nihil novum ſub ſole*, and is as well to be applied *ad facta*, as *ad dicta*, *ut nihil neque dictum neque factum, quod non eſt dictum et factum prius*. I have farther for my warrant that famous complaint of Solomon to his ſon, againſt the infinite making of books in his time, of which in all congruity it muſt needs be underſtood, that a great part were obſervations and inſtructions in all kind of literature; and of thoſe there is not now ſo much as one petty pamphlet, only ſome parts of the bible excepted, remaining to poſterity.

As then there was not, in like manner, any footing to be found of millions of authors that were long before Solomon, and yet we muſt give credit to that which

he affirmed, that whatsoever was then, or had been before, it could never be truly pronounced of it, Behold this is new.

Whereupon I must for my final conclusion infer, seeing all the endeavours, study, and knowledge of mankind, in whatsoever art or science, have ever been the same, as they are at this present, though full of mutabilities, according to the changes and accidental occasions of ages and countries, and clerks dispositions, which can never be but subject to intention and remission, both in their devices and practices of their knowledge: If now we should accord in opinion with you, First, to condemn our present knowledge of doubts and incertitudes, which you confirm but by averment, without other force of argument: And then to disclaim all our axioms and maxims, and general assertions that are left by tradition from our elders to us, which (for so it is to be pretended) have passed all probations of the sharpest wits that ever were. And lastly, to devise, being now become again as it were *abecedarii*, by the frequent spelling of particulars to come to the notice of the true generals, and so afresh to create new principles of sciences: The end of all would be, that when we shall be dispossessed of the learning which we have, all our consequent travails will but help us in a circle to conduct us to the place from whence we set forward, and bring us to the happiness to be restored *in integrum*: which will require as many ages as have marched before us, to be perfectly atchieved.

And this I write with no dislike of increasing our knowledge with new-found devices, which is undoubtedly a practice of high commendation, in regard of the benefit they will yield for the present; that the world hath ever been, and will assuredly for ever continue very full of such devisors, whose industry hath been very obstinate and eminent that way, and hath produced strange effects, above the reach and the hope of mens common capacities; and yet our notions and theorems have always kept in grace both with them, and with the rarest that ever were named among the learned.

By this you see to what boldness I am brought by your kindness, that if I seem to be too saucy in this contradiction, it is the opinion that I hold of your noble disposition, and of the freedom in these cases that you will afford your special friend, that hath induced me to do it. And although I myself, like a carrier's horse, cannot baulk the beaten way in which I have been trained, yet such is my censure of your *Cogitata*, that I must tell you, to be plain, you have very much wronged yourself and the world, to smother such a treasure so long in your coffer; for though I stand well assured, for the tenor and subject of your main discourse, you are not able to impannel a substantial jury in any university that will give up a verdict to acquit you of error, yet it cannot be gainsaid, but all your treatise over doth abound with choice conceits of the present state of learning, and with so worthy contemplations of the means to procure it, as may persuade any student to look more narrowly to his business, not only by aspiring to the greatest perfection of that which is now-a-days divulged in the sciences, but by diving yet deeper into (as it were) the bowels and secrets of nature, and by enforcing of the powers of his judgment and wit, to learn of St. Paul, *consectari meliora dona*: which course, would to God (to whisper so much in your ear) you had followed at the first, when you fell into the study of such a study as was not worthy such a student. Nevertheless, being so as it is, that you are therein settled, and your country soundly served, I cannot but wish with all my heart, as I do very often, that you may gain a fit reward to the full of your deserts, which I hope will come with heaps of happiness and honour.

Yours to be used and commanded,

From Fulham, Feb. 19, 1607.

THO. BODELEY.

POSTSCRIPT.

SIR,

ONE kind of boldneſs doth draw on another, inſomuch as, methinks, I ſhould offend not to ſignify, that before the tranſcript of your book be fitted for the preſs, it will be requiſite for you to caſt a cenſor's eye upon the ſtyle and the elocution; which in the framing of ſome periods, and in divers words and phraſes, will hardly go for current, if the copy brought to me be juſt the ſame that you would publiſh.

XCIX. To Mr. MATTHEW, upon ſending to him a part of *Inſtauratio Magna.*

Mr. MATTHEW,

I Plainly perceive by your affectionate writing touching my work, that one and the ſame thing affecteth us both; which is, the good end to which it is dedicated: for as to any ability of mine, it cannot merit that degree of approbation. For your caution for church-men and church-matters, as for any impediment it might be to the applauſe and celebrity of my work, it moveth me not; but as it may hinder the fruit and good which may come of a quiet and calm paſſage to the good port to which it is bound, I hold it a juſt reſpect; ſo as to fetch a fair wind I go not too far about. But the truth is, that I at all have no occaſion to meet them in my way; except it be as they will needs confederate themſelves with Ariſtotle, who, you know, is intemperately magnified by the ſchool-men; and is alſo allied, as I take it, to the jeſuits, by Faber, who was a companion of Loyola, and a great Ariſtotelian. I ſend you at this time the only part which hath any harſhneſs; and yet I framed to myſelf an opinion, that whoſoever allowed well of that preface, which you ſo much commend, will not diſlike, or at leaſt ought not to diſlike, this other ſpeech of preparation; for it is written out of the ſame ſpirit, and out of the ſame neceſſity: nay, it doth more fully lay open, that the queſtion between me and the ancients, is not of the virtue of the race, but of the rightneſs of the way. And to ſpeak truth, it is to the other but as *palma* to *pugnus*, part of the ſame thing more large. You conceive aright, that in this, and the other, you have commiſſion to impart and communicate them to others, according to your diſcretion. Other matters I write not of. Myſelf am like the miller of Grancheſter, that was wont to pray for peace amongſt the willows; for while the winds blew, the wind-mills wrought, and the water-mill was leſs cuſtomed. So I ſee that controverſies of religion muſt hinder the advancement of ſciences. Let me conclude with my perpetual wiſh towards yourſelf, that the approbation of yourſelf, by your own diſcreet and temperate carriage, may reſtore you to your country, and your friends to your ſociety. And ſo I commend you to God's goodneſs.

Gray's-Inn, Oct. 10, 1609.

C. To Mr. MATTHEW.

SIR,

I Thank you for your laſt, and pray you to believe, that your liberty in giving opinion of thoſe writings which I ſent you, is that which I ſought, which I expected, and which I take in exceeding good part; ſo good, as that it makes me recontinue, or rather continue my hearty wiſhes of your company here, that ſo you might uſe the ſame liberty concerning my actions, which now you exerciſe concerning my writings. For that of queen Elizabeth, your judgment of the temper and truth of that part, which concerns ſome of her foreign

reign proceedings, concurs fully with the judgment of others, to whom I have communicated part of it; and as things go, I ſuppoſe they are likely to be more and more juſtified and allowed. And whereas you ſay, for ſome other part, that it moves and opens a fair occaſion, and broad way, into ſome field of contradiction: on the other ſide it is written to me from the leiger at Paris, and ſome others alſo, that it carries a manifeſt impreſſion of truth with it, and that it even convinces as it grows. Theſe are their very words; which I write not for mine own glory, but to ſhew what variety of opinion riſes from the diſpoſition of ſeveral readers. And I muſt confeſs my deſire to be, that my writings ſhould not court the preſent time, or ſome few places, in ſuch ſort as might make them either leſs general to perſons, or leſs permanent in future ages. As to the *Inſtauration*, your ſo full approbation thereof I read with much comfort, by how much more my heart is upon it; and by how much leſs I expected conſent and concurrence in a matter ſo obſcure. Of this I can aſſure you, that though many things of great hope decay with youth (and multitude of civil buſineſſes is wont to diminiſh the price, though not the delight of contemplations) yet the proceeding in that work doth gain with me upon my affection and deſire, both by years and buſineſſes. And therefore I hope, even by this, that it is well pleaſing to God, from whom, and to whom, all good moves. To him I moſt heartily commend you.

CI. To Mr. Matthew.

Mr. Matthew,

I Heartily thank you for your letter of the 10th of February, and am glad to receive from you matter both of encouragement, and of advertiſement touching my writings. For my part, I do wiſh, that ſince there is no [a] *lumen ſiccum* in the world, but all *madidum*, and *maceratum*, infuſed in affections, and bloods, or humours, that theſe things of mine had thoſe ſeparations that might make them more acceptable: ſo that they claim not ſo much acquaintance of the preſent times, as they be thereby the leſs apt to laſt. And to ſhew you that I have ſome purpoſe to new-mould them, I ſend you a leaf or two of the preface, carrying ſome figure of the whole work. Wherein I purpoſe to take that which I count real and effectual of both writings; and chiefly, to add a pledge (if not payment,) to my promiſes, I ſend you alſo a memorial of queen Elizabeth; to requite your eulogy of the late duke of [b] Florence's felicity. Of this, when you were here, I ſhewed you ſome model; at what time, methought, you were more willing to hear Julius Cæſar, than queen Elizabeth, commended. But this which I ſend is more full, and hath more of the narrative: And farther, hath one part that, I think, will not be diſagreeable either to you, or that place; being the true tract of her proceedings towards the catholicks, which are infinitely miſtaken. And though I do not imagine, they will paſs allowance there, yet they will gain upon excuſe. I find Mr. Le Zure to uſe you well (I mean his tongue of you) which ſhews you either honeſt, or wiſe: but this I ſpeak merrily. For in good faith I do conceive hope, that you will ſo govern yourſelf, as we may take you as aſſuredly for a good ſubject and patriot, as you take yourſelf for a good chriſtian; and ſo we may again enjoy your company, and you your conſcience, if it may no otherways be. For my part, aſſure yourſelf (as we ſay in the law) *mutatis mutandis*, my love and good wiſhes to you are not diminiſhed. And ſo I remain.

[a] Our author alludes to one of the dark ſayings of Heraclitus, that dry light is ever the beſt; which in another place he thus expounds: "Certainly the light that a man receiveth by counſel from another, is drier "and purer than that which cometh from his own underſtanding and judgment, this being ever infuſed and drenched in his affections." *Stephens.*

[b] This duke of Florence was named Ferdinand, of the houſe of Medici; whoſe memory Sir Henry Wotton celebrated in a letter printed in his Remains, and preſented to King Charles I. Piaſecius, the biſhop of Premiſta in Poland, begins his chronicle of the year 1609, with an account of his death; and ſums up his character in theſe words: *Princeps animo excelſo, et omnibus politicis artibus in tantum inſtructus, ut in multis ſeculis vix aequalem habuerit. Stephens.*

CII. To Mr. MATTHEW, upon ſending his book *De ſapientia veterum.*

Mr. MATTHEW,

I Do very heartily thank you for your letter of the 24th of Auguſt from Salamanca; and in recompence thereof I ſend you a little work of mine, that hath begun to paſs the world. They tell me my Latin is turned into ſilver, and become current: had you been here, you ſhould have been my inquiſitor before it came forth: But, I think, the greateſt inquiſitor in Spain will allow it. But one thing you muſt pardon me if I make no haſte to believe, that the world ſhould be grown to ſuch an ecſtacy as to reject truth in philoſophy, becauſe the author diſſenteth in religion; no more than they do by Ariſtotle or Averroes. My great work goeth forward; and after my manner, I alter ever when I add. So that nothing is finiſhed till all be finiſhed. This I have written in the midſt of a term and parliament; thinking no time ſo poſſeſſed, but that I ſhould talk of theſe matters with ſo good and dear a friend. And ſo with my wonted wiſhes I leave you to God's goodneſs.

From Gray's-Inn, Feb. 27, 1610.

CIII. To the KING.

It may pleaſe your Majeſty,

YOUR great and princely favours towards me in advancing me to place; and, that which is to me of no leſs comfort, your Majeſty's benign and gracious acceptation, from time to time, of my poor ſervices, much above the merit and value of them; hath almoſt brought me to an opinion that I may ſooner (perchance) be wanting to myſelf in not aſking, than find your Majeſty's goodneſs wanting to me in any my reaſonable and modeſt deſires. And therefore perceiving how at this time preferments of law fly about mine ears, to ſome above me, and to ſome below me; I did conceive your Majeſty may think it rather a kind of dullneſs, or want of faith, than modeſty, if I ſhould not come with my pitcher to Jacob's well, as others do. Wherein I ſhall propound to your Majeſty that which tendeth not ſo much to the raiſing of my fortune, as to the ſettling of my mind; being ſometimes aſſailed with this cogitation, that by reaſon of my ſlowneſs to ſee and apprehend ſudden occaſions, keeping in one plain courſe of painful ſervice, I may *(in fine dierum)* be in danger to be neglected and forgotten: and if that ſhould be, then were it much better for me, now while I ſtand in your Majeſty's good opinion (though unworthy) and have ſome little reputation in the world, to give over the courſe I am in, and to make proof to do you ſome honour by my pen, either by writing ſome faithful narrative of your happy (though not untraduced) times; or by recompiling your laws (which, I perceive, your Majeſty laboureth with; and hath in your head, as Jupiter had Pallas) or ſome other the like work; (for without ſome endeavour to do you honour, I would not live) than to ſpend my wits and time in this laborious place wherein I now ſerve; if it ſhall be deprived of thoſe outward ornaments, which it was wont to have, in reſpect of an aſſured ſucceſſion to ſome place of more dignity and reſt; which ſeemeth now to be an hope altogether caſual, if not wholly intercepted. Wherefore (not to hold your Majeſty long) my humble ſuit to you is that, than the which I think I cannot well go lower; which is, that I may obtain your royal promiſe to ſucceed (if I live) into the attorney's place, whenſoever it ſhall be void; it being but the natural and immediate ſtep and riſe which the place I now hold hath ever (in ſort) made claim to, and almoſt never failed of.

In this ſuit I make no friends but to your Majeſty, rely upon no other motive but your grace, nor any other aſſurance but your word; whereof I had good experience, when I came to the ſolicitor's place, that it was like to the two great lights, which in their motions are never retrograde. So with my beſt prayers for your Majeſty's happineſs, I reſt.

CIV. To the KING.

It may pleaſe your moſt excellent Majeſty,

I Do underſtand by ſome of my good friends, to my great comfort, that your Majeſty hath in mind your Majeſty's royal promiſe (which to me is *anchora ſpei*) touching the attorney's place. I hope Mr. Attorney ſhall do well. I thank God I wiſh no man's death, nor much mine own life, more than to do your Majeſty ſervice. *For I account my life the accident, and my duty the ſubſtance. But this I will be bold to ſay; If it pleaſe God that I ever ſerve your Majeſty in the attorney's place, I have known an attorney Coke, and an attorney Hobart, both worthy men, and far above myſelf; but if I ſhould not find a middle way between their two diſpoſitions and carriages, I ſhould not ſatisfy myſelf. But theſe things are far or near, as it ſhall pleaſe God. Mean while I moſt humbly pray your Majeſty to accept my ſacrifice of thankſgiving for your gracious favour. God preſerve your Majeſty. I ever remain.

CV. To the moſt high and excellent prince, HENRY, prince of Wales, duke of Cornwall, and earl of Cheſter.

It may pleaſe your Highneſs,

HAving divided my life into the contemplative, and active part, I am deſirous to give his Majeſty, and your Highneſs, of the fruits of both, ſimple though they be.

To write juſt treatiſes, requireth leiſure in the writer, and leiſure in the reader, and therefore are not ſo fit, neither in regard of your Highneſs's princely affairs, nor in regard of my continual ſervice; which is the cauſe that hath made me chuſe to write certain brief notes, ſet down rather ſignificantly, than curiouſly, which I have called *Eſſays*. The word is late, but the thing is ancient; for Seneca's epiſtles to Lucilius, if you mark them well, are but eſſays, that is, diſperſed meditations, though conveyed in the form of epiſtles. Theſe labours of mine, I know, cannot be worthy of your Highneſs, for what can be worthy of you? But my hope is, they may be as grains of ſalt, that will rather give you an appetite, than offend you with ſatiety. And although they handle thoſe things wherein both mens lives and their perſons are moſt converſant; yet what I have attained I know not; but I have endeavoured to make them not vulgar, but of a nature, whereof a man ſhall find much in experience, and little in books; ſo as they are neither repetitions nor fancies. But, however, I ſhall moſt humbly deſire your Highneſs to accept them in gracious part, and to conceive, that if I cannot reſt, but muſt ſhew my dutiful and devoted affection to your Highneſs in theſe things which proceed from myſelf, I ſhall be much more ready to do it in performance of any of your princely commandments. And ſo wiſhing your Highneſs all princely felicity, I reſt,

Your Highneſs's moſt humble ſervant,

FR. BACON.

* Sir Francis Bacon deſigned to have prefixed this epiſtle to his Eſſays, printed in the year 1612, but was prevented by the prince's death; yet it was ſo well liked by Mr. Matthew, that he inſerted part of it in his dedication to the duke of Tuſcany, before his tranſlation of thoſe Eſſays, printed in 1618.

CVI. To the earl of SALISBURY, lord treaſurer.

It may pleaſe your good Lordſhip,

I Would intreat the new year to anſwer for the old, in my humble thanks to your lordſhip; both for many your favours, and chiefly that upon the occaſion of Mr. Attorney's infirmity I found your lordſhip even as I could wiſh. This doth increaſe a deſire in me to expreſs my thankful mind to your lordſhip; hoping, that though I find age and decays grow upon me, yet I may have a flaſh or two of ſpirit left to do you ſervice: and I do proteſt before God, without compliment, or any light vanity of mind, that if I knew in what courſe of life to do you beſt ſervice, I would take it, and make my thoughts, which now fly to many pieces, to be reduced to that center. But all this is no more than I am, which is not much; but yet the entire of him that is, etc.

CVII. To my LORD-MAYOR.

My very good Lord,

I Did little expect, when I left your lordſhip laſt, that there would have been a proceeding againſt Mr. Barnard to his overthrow: Wherein I muſt confeſs myſelf to be in a ſort acceſſary; becauſe he relying upon me for counſel, I adviſed that courſe which he followed. Wherein now I begin to queſtion myſelf, whether in preſerving my reſpects unto your lordſhip, and the reſt, I have not failed in the duty of my profeſſion towards my client. For certainly, if the words had been heinous, and ſpoken in a malicious faſhion, and in ſome publick place, and well proved; and not a prattle in a tavern, caught hold of by one who (as I hear) is a detected ſycophant (Standiſh, I mean;) yet I know not what could have been done more, than to impoſe upon him a grievous fine, and to require the levying of the ſame; and to take away his means of life by his disfranchiſement, and to commit him to a defamed priſon during Chriſtmas; in honour whereof, the priſoners in other courts do commonly of grace obtain ſome enlargement. This rigor of proceeding (to tell your lordſhip and the reſt, as my good friends, my opinion plainly) tendeth not to ſtrengthen authority, which is beſt ſupported by love and fear intermixed; but rather to make people diſcontented and ſervile; eſpecially when ſuch puniſhment is inflicted for words not by rule of law, but by a juriſdiction of diſcretion, which would evermore be moderately uſed. And I pray God, whereas Mr. Recorder, when I was with you, did well and wiſely put you in mind of the admonitions you often received from my lords, that you ſhould bridle unruly tongues; that thoſe kind of ſpeeches and rumours, whereunto thoſe admonitions do refer, which are concerning the ſtate, and honour thereof, do not paſs too licentiouſly in the city unpuniſhed; while theſe words which concern your particular, are ſo ſtraitly enquired into, and puniſhed with ſuch extremity. But theſe things your own wiſdom (firſt or laſt) will beſt repreſent unto you. My writing unto you at this time is, to the end, that howſoever I do take it ſomewhat unkindly, that my mediation prevailed no more; yet that I might preſerve that farther reſpect that I am willing to uſe unto ſuch a ſtate, in delivering my opinion unto you freely, before I would be of counſel, or move any thing that ſhould croſs your proceedings; which, notwithſtanding, (in caſe my client can receive no relief at your hands) I muſt and will do; continuing, nevertheleſs, in other things, my wonted good affection to yourſelves and your occaſions.

CVIII. To

CVIII. To Sir VINCENT SKINNER.

Sir VINCENT SKINNER,[a]

I See that by your needleſs delays, this matter is grown to a new queſtion; wherein for the matter itſelf, if it had been ſtaid at the beginning by my lord Treaſurer and Mr. Chancellor, I ſhould not ſo much have ſtood upon it. For the great and daily travels which I take in his majeſty's ſervice, either are rewarded in themſelves, in that they are but my duty, or elſe may deſerve a much greater matter. Neither can I think amiſs of any man, that in furtherance of the king's benefit moved the doubt, that knew not what warrant I had. But my wrong is, that you, having had my lord Treaſurer's and Mr. Chancellor's warrant for payment above a month ſince; you, I ſay (making your payments, belike, upon ſuch differences, as are better known to yourſelf, than agreeable to the reſpect of his majeſty's ſervice) have delayed all this time, otherwiſe than I might have expected from our ancient acquaintance, or from that regard which one in your place may owe to one in mine. By occaſion whereof there enſueth to me a greater inconvenience, that now my name in ſort muſt be in queſtion among you, as if I were a man likely to demand that which were unreaſonable, or be denied that which is reaſonable: and this muſt be, becauſe you can pleaſure men at pleaſure. But this I leave with this: That it is the firſt matter wherein I had occaſion to diſcern of your friendſhip, which I ſee to fall to this; that whereas Mr. Chancellor, the laſt time, in my man's hearing, very honourably ſaid, that he would not diſcontent any man in my place; it ſeems you have no ſuch caution. But my writing to you now is to know of you where now the ſtay is, without being any more beholden to you, to whom indeed no man ought to be beholden in thoſe caſes in a right courſe. And ſo I bid you farewel.

FRA. BACON.

[a] Officer of the receipts of the exchequer. Rymer, XVI. p. 497.

CIX. To Sir HENRY SAVILLE.[a]

SIR,

COming back from your invitation at Eton, where I had refreſhed myſelf with company which I loved, I fell into a conſideration of that part of policy whereof philoſophy ſpeaketh too much, and laws too little; and that is, of education of youth. Whereupon fixing my mind awhile, I found ſtraitways, and noted even in the diſcourſes of philoſophers, which are ſo large in this argument, a ſtrange ſilence concerning one principal part of that ſubject. For as touching the framing and ſeaſoning of youth to moral virtues, (as tolerance of labours, continency from pleaſures, obedience, honour, and the like) they handle it: but touching the improvement, and helping of the intellectual powers, as of conceit, memory and judgment, they ſay nothing: whether it were, that they thought it to be a matter wherein nature only prevailed; or that they intended it as referred to the ſeveral and proper arts which teach the uſe of reaſon and ſpeech. But for the former of theſe two reaſons, howſoever it pleaſeth them to diſtinguiſh of habits and powers, the experience is manifeſt enough, that the motions and faculties of the wit and memory may be not only governed and guided, but alſo confirmed and enlarged by cuſtom and exerciſe duly applied: as if a man exerciſe ſhooting, he ſhall not only ſhoot nearer the mark, but alſo draw a ſtronger bow. And as for the latter, of comprehending theſe

[a] Sir Henry Saville, ſo juſtly celebrated for his noble edition of St. Chryſoſtom, and other learned works, was many years warden of Merton-college in Oxford, (in which univerſity he founded a geometry and aſtronomy lecture, 25 May, 1620. See the inſtrument of foundation, Rymer XVII. p. 217.) and likewiſe provoſt of Eton. To this gentleman, as of all the moſt proper, Sir Francis Bacon ſends this diſcourſe touching *Helps for the intellectual powers in youth*; but being an imperfect eſſay to incite others, he places this uſeful ſubject among the deficients reckon'd up in his *Advancement of learning*. *Stephens.*

theſe precepts within the arts of logick and rhetorick, if it be rightly conſidered, their office is diſtinct altogether from this point; for it is no part of the doctrine of the uſe or handling of an inſtrument, to teach how to whet or grind the inſtrument to give it a ſharp edge, or how to quench it, or otherwiſe whereby to give it a ſtronger temper. Wherefore finding this part of knowledge not broken, I have, but *tanquam aliud agens*, entered into it, and ſalute you with it; dedicating it, after the ancient manner, firſt as to a dear friend, and then as to an apt perſon, foraſmuch as you have both place to practiſe it, and judgment and leiſure to look deeper into it than I have done. Herein you muſt call to mind Ἄριστον μὲν ὕδωρ. Tho' the argument be not of great height and dignity, nevertheleſs it is of great and univerſal uſe: And yet I do not ſee why, to conſider it rightly, that ſhould not be a learning of height, which teacheth to raiſe the higheſt and worthieſt part of the mind. But howſoever that be, if the world take any light and uſe by this writing, I will the gratulation be to the good friendſhip and acquaintance between us two: And ſo I commend you to God's divine protection.

A diſcourſe touching helps for the intellectual powers.

I Did ever hold it for an inſolent and unlucky ſaying, *Faber quiſque fortunae ſuae*; except it be uttered only as an hortative or ſpur to correct ſloth. For otherwiſe, if it be believed as it ſoundeth, and that a man entereth into an high imagination that he can compaſs and fathom all accidents; and aſcribeth all ſucceſſes to his drifts and reaches; and the contrary to his errors and ſleepings: it is commonly ſeen that the evening fortune of that man is not ſo proſperous, as of him that without ſlackening of his induſtry attributeth much to felicity and providence above him. But if the ſentence were turned to this, *Faber quiſque ingenii ſui*, it were ſomewhat more true, and much more profitable; becauſe it would teach men to bend themſelves to reform thoſe imperfections in themſelves which now they ſeek but to cover, and to attain thoſe virtues and good parts which now they ſeek but to have only in ſhew and demonſtration. Yet notwithſtanding every man attempteth to be of the firſt trade, of carpenters, and few bind themſelves to the ſecond; whereas nevertheleſs the riſing in fortune ſeldom amendeth the mind; but on the other ſide, the removing of the ſtonds and impediments of the mind, doth often clear the paſſage and current to a man's fortune. But certain it is, whether it be believed or no, that as the moſt excellent of metals, gold, is of all other the moſt pliant and moſt enduring to be wrought; ſo of all living and breathing ſubſtances, the perfecteſt (man) is the moſt ſuſceptible of help, improvement, impreſſion, and alteration; and not only in his body, but in his mind and ſpirit; and there again not only in his appetite and affection, but in his powers of wit and reaſon.

For as to the body of man, we find many and ſtrange experiences, how nature is over-wrought by cuſtom, even in actions that ſeem of moſt difficulty and leaſt poſſible. As firſt in voluntary motion, which tho' it be termed voluntary, yet the higheſt degrees of it are not voluntary; for it is in my power and will to run; but to run faſter than according to my lightneſs or diſpoſition of body, is not in my power nor will. We ſee the induſtry and practice of tumblers and funambulo's, what effects of great wonder it bringeth the body of man unto. So for ſuffering of pain and dolour, which is thought ſo contrary to the nature of man, there is much example of penances in ſtrict orders of ſuperſtition what they do endure, ſuch as may well verify the report of the Spartan boys, which were wont to be ſcourged upon the altar ſo bitterly as ſometimes they died of it, and yet were never heard to complain. And to paſs to thoſe faculties which are reckon'd more involuntary, as long faſting and abſtinence, and the contrary extreme (voracity;) the leaving and forbearing the uſe of drink for altogether; the enduring vehement cold, and the like; there have not

wanted, neither do want, divers examples of ſtrange victories over the body in every of theſe. Nay, in reſpiration, the proof hath been of ſome who by continual uſe of diving and working under the water, have brought themſelves to be able to hold their breath an incredible time; and others that have been able, without ſuffocation, to endure the ſtifling breath of an oven or furnace ſo heated as tho' it did not ſcald nor burn, yet it was many degrees too hot for any man not made to it to breathe or take in. And ſome impoſtors and counterfeits likewiſe have been able to wreathe and caſt their bodies into ſtrange forms and motions; yea, and others to bring themſelves into trances and aſtoniſhments. All which examples do demonſtrate how variouſly and to how high points and degrees the body of man may be as it were moulded and wrought. And if any man conceive that it is ſome ſecret propriety of nature that hath been in thoſe perſons which have attained to thoſe points, and that it is not open for every man to do the like, tho' he had been put to it; for which cauſe ſuch things come but very rarely to paſs: It is true no doubt but ſome perſons are apter than others; but ſo as the more aptneſs cauſeth perfection, but the leſs aptneſs doth not diſable: So that for example, the more apt child, that is taken to be made a funambulo, will prove more excellent in his feats; but the leſs apt will be *gregarius funambulo* alſo. And there is ſmall queſtion, but that theſe abilities would have been more common, and others of like ſort, not attempted, would likewiſe have been brought upon the ſtage, but for two reaſons: The one, becauſe of mens diffidence in prejudging them as impoſſibilities; for it holdeth in thoſe things which the poet ſaith, *poſſunt, quia poſſe videntur*; for no man ſhall know how much may be done, except he believe much may be done. The other reaſon is, becauſe they be but practices baſe and inglorious, and of no great uſe, and therefore ſequeſtered from reward of value, and on the other ſide painful; ſo as the recompence balanceth not with the travel and ſuffering. And as to the will of man, it is that which is moſt maniable and obedient; as that which admitteth moſt medicines to cure and alter it. The moſt ſovereign of all is religion, which is able to change and transform it in the deepeſt and moſt inward inclinations and motions; and next to that is opinion and apprehenſion, whether it be infuſed by tradition and inſtitution, or wrought in by diſputation and perſuaſion; and the third is example, which transformeth the will of man into the ſimilitude of that which is moſt obverſant and familiar towards it; and the fourth is, when one affection is healed and corrected by another, as when cowardice is remedied by ſhame and diſhonour, or ſluggiſhneſs and backwardneſs by indignation and emulation, and ſo of the like; and laſtly, when all theſe means or any of them have new framed or formed human will, then doth cuſtom and habit corroborate and confirm all the reſt. Therefore it is no marvel, tho' this faculty of the mind (of will and election) which inclineth affection and appetite, being but the inceptions and rudiments of will, may be ſo well governed and managed; becauſe it admitteth acceſs to ſo divers remedies to be applied to it, and to work upon it: The effects whereof are ſo many, and ſo known, as require no enumeration; but generally they do iſſue, as medicines do, into two kinds of cures, whereof the one is a juſt or true cure, and the other is called palliation: For either the labour and intention is to reform the affections really and truly, reſtraining them if they be too violent, and raiſing them if they be too ſoft and weak; or elſe it is to cover them, or, if occaſion be, to pretend them and repreſent them: Of the former ſort whereof the examples are plentiful in the ſchools of philoſophers, and in all other inſtitutions of moral virtue: and of the other ſort the examples are more plentiful in the courts of princes, and in all politick traffick; where it is ordinary to find, not only profound diſſimulations, and ſuffocating the affections, that no note or mark appear of them outwardly; but alſo lively ſimulations and affectations, carrying the tokens of paſſions which are not, as *riſus juſſus* and *lacrymae coactae*, and the like.

Of helps of the intellectual powers.

THE intellectual powers have fewer means to work upon them, than the will or body of man; but the one that prevaileth, that is exercise, worketh more forcibly in them than in the rest.

These that follow are but indigested notes.

THE ancient habit of the philosophers, *Si quis quaerat in utramque partem de omni scibili.*

The exercise of scholars making verses extempore, *Stans pede in uno.*

The exercise of lawyers in memory narrative.

The exercise of sophists, and *Jo. ad oppositum*, with manifest effect.

Artificial memory greatly holpen by exercise.

The exercise of buffoons to draw all things to conceits ridiculous.

THE means that help the understanding and faculties thereof are,

(Not example, as in the will, by conversation; and here the conceit of imitation already digested, with the confutation, *obiter si videbitur*, of Tully's opinion, advising a man to take some one to imitate. Similitude of faces analysed.)

Arts, Logick, Rhetorick: The ancients, Aristotle, Plato, Theætetus, Gorgias *litigiosus vel sophista*, Protagoras, Aristotle, *schola sua*. Topicks, Elenchs, Rhetoricks, Organon, Cicero, Hermogenes. The Neotericks, Ramus, Agricola, *Nil sacri*; Lullius his Typocosmia, studying Cooper's Dictionary, Matthæus collection of proper words for metaphors, Agrippa *de vanitatibus, etc.*

Que. If not here of imitation.

Collections preparative. Aristotle's similitude of a shoemaker's shop, full of shoes of all sorts: Demosthenes, *Exordia concionum.* Tully's precept of theses of all sorts preparative.

The relying upon exercise, with the difference of using and tempering the instrument; and the similitude of prescribing against the laws of nature and of estate.

Five Points.

1. THAT exercises are to be framed to the life; that is to say, to work ability in that kind whereof a man in the course of action shall have most use.

2. The indirect and oblique exercises, which do, *per partes* and *per consequentiam*, inable these faculties; which perhaps direct exercise at first would but distort; and these have chiefly place where the faculty is weak, not *per se*, but *per accidens:* As if want of memory grow through lightness of wit and want of staid attention; then the mathematicks or the law helpeth; because they are things, wherein if the mind once roam, it cannot recover.

3. Of the advantages of exercise; as to dance with heavy shoes, to march with heavy armour and carriage; and the contrary advantage (in natures very dull and unapt) of working alacrity, by framing an exercise with some delight or affection.

Horat. Sat. I. 25.

Vt pueris olim dant crustula blandi
Doctores, elementa velint ut discere prima.

4. Of the cautions of exercise; as to beware lest by evil doing (as all beginners do weakly) a man grow not, and be inveterate, in an ill habit, and so take not the advantage of custom in perfection, but in confirming ill. Slubbering on the lute.

5. The marshalling and sequel of sciences and practices: logick and rhetorick should be used to be read after poesy, history, and philosophy: first, exercise, to do things well and clean; after, promptly and readily.

The exercises in the universities and schools are of memory and invention; either to speak by heart that which is set down *verbatim*, or to speak *extempore:* whereas there is little use in action of either or both; but most things which we utter are neither verbally premeditate, nor merely extemporal. Therefore exercise would be framed to take a little breathing, and to consider of heads; and then to fit and form the speech *extempore.* This would be done in two manners;

ners; both with writing and tables, and without: for in moſt actions it is permitted and paſſable to uſe the note, whereunto if a man be not accuſtomed, it will put him out.

There is no uſe of a narrative memory *in academiis*, viz. with circumſtances of times, perſons, and places, and with names; and it is one art to diſcourſe, and another to relate and deſcribe; and herein uſe and action is moſt converſant.

Alſo to ſum up and contract, is a thing in action of very general uſe.

CX. Sir Francis Bacon to Mr. Matthew, about his writings, and the death of a friend.

SIR,

THE reaſon of ſo much time taken before my anſwer to yours of the fourth of Auguſt, was chiefly my accompanying my letter with the paper which here I ſend you; and again, now lately (not to hold from you till the end of a letter, that which by grief may, for a time, efface all the former contents) the death of your good friend and mine A. B. to whom becauſe I uſed to ſend my letters for conveyance to you, it made me ſo much the more unready in the diſpatch of them. In the mean time I think myſelf (howſoever it have pleaſed God otherwiſe to bleſs me) a moſt unfortunate man, to be deprived of two (a great number in true friendſhip) of thoſe friends, whom I accounted as no ſtage-friends, but private friends (and ſuch, as with whom I might both freely and ſafely communicate) him by death, and you by abſence. As for the memorial of the late deceaſed queen, I will not queſtion whether you be to paſs for a diſintereſted man or no; I freely confeſs myſelf am not, and ſo I leave it. As for my other writings, you make me very glad of your approbation; the rather, becauſe you add a concurrence in opinion with others; for elſe I might have conceived, that affection would, perhaps, have prevailed with you, beyond that, which (if your judgment had been neat and free) you could have eſteemed. And as for your caution, touching the dignity of eccleſiaſtical perſons, I ſhall not have cauſe to meet with them any otherwiſe, than in that ſome ſchoolmen have, with exceſs, advanced the authority of Ariſtotle. Other occaſion I ſhall have none. But now I have ſent you that only part of the whole writing, which may perhaps have a little harſhneſs and provocation in it: although I may almoſt ſecure myſelf, that if the preface paſſed ſo well, this will not irritate more; being indeed, to the preface, but as *palma ad pugnum*. Your own love expreſſed to me, I heartily embrace; and hope that there will never be occaſion of other, than entireneſs between us; which nothing but *majores charitates* ſhall ever be able to break off.

CXI. To the King.

It may pleaſe your excellent Majeſty,

IT grieveth me exceedingly that your Majeſty ſhould be ſo much troubled with this matter of Peacham, whoſe raging devil ſeemeth to be turned into a dumb devil. But although we are driven to make our way through queſtions (which I wiſh were otherwiſe) yet, I hope well, the end will be good. But then every man muſt put to his helping hand; for elſe I muſt ſay to your Majeſty, in this and the like caſes, as St. Paul ſaid to the centurion, when ſome of the mariners had an eye to the cock-boat, *Except theſe ſtay in the ſhip ye cannot be ſafe*. I find in my lords great and worthy care of the buſineſs: And for my part, I hold my opinion and am ſtrengthened in it by ſome records that I have found. God preſerve your Majeſty.

Your Majeſty's moſt humble and devoted ſubject and ſervant,

Jan. 21, 1614. FR. BACON.

CXII. To the KING, touching Peacham's cauſe.

It may pleaſe your excellent Majeſty,

THIS day in the afternoon was read your Majeſty's letters of direction touching [a] Peacham; which becauſe it concerneth properly the duty of my place, I thought it fit for me to give your Majeſty both a ſpeedy and a private account thereof; that your Majeſty, knowing things clearly how they paſs, may have the true fruit of your own wiſdom and clear-ſeeing judgment in governing the buſineſs.

Firſt, for the regularity which your Majeſty (as a maſter in buſineſs of eſtate) doth prudently preſcribe in examining and taking examinations, I ſubſcribe to it; only I will ſay for myſelf, that I was not at this time the principal examiner.

For the courſe your Majeſty directeth and commandeth for the feeling of the judges of the king's bench, their ſeveral opinions, by diſtributing ourſelves and enjoining ſecrecy; we did firſt find an encounter in the opinion of my lord Coke, who ſeemed to affirm, that ſuch particular and (as he call'd it) auricular taking of opinions was not according to the cuſtom of this realm; and ſeemed to divine, that his brethren would never do it. But when I replied, that it was our duty to purſue your Majeſty's directions, and it were not amiſs for his lordſhip to leave his brethren to their own anſwers; it was ſo concluded: and his lordſhip did deſire that I might confer with himſelf; and Mr. Serjeant Mountague was named to ſpeak with Juſtice Crook; Mr. Serjeant Crew with Juſtice Houghton; and Mr. Solicitor with Juſtice [b] Dodderidge. This done, I took my fellows aſide, and adviſed that they ſhould preſently ſpeak with the three judges, before I could ſpeak with my lord Coke, for doubt of infuſion; and that they ſhould not in any caſe make any doubt to the judges, as if they miſtruſted they would not deliver any opinion apart, but ſpeak reſolutely to them, and only make their coming to be, to know what time they would appoint to be attended with the papers. This ſorted not amiſs; for Mr. Solicitor came to me this evening, and related to me that he had found Judge Dodderidge very ready to give opinion in ſecret; and fell upon the ſame reaſon which upon your Majeſty's firſt letter I had uſed to my lord Coke at the council-table; which was, that every judge was bound expreſly by his oath, to give your Majeſty counſel when he was called; and whether he ſhould do it jointly or ſeverally, that reſted in your Majeſty's good pleaſure, as you would require it. And though the ordinary courſe was to aſſemble them, yet there might intervene caſes, wherein the other courſe was more convenient. The like anſwer made [c] Juſtice Crook. Juſtice Houghton,

[a] Peacham was accuſed of having inſerted ſeveral treaſonable paſſages in a ſermon; but in a ſermon never preached, nor intended to be made publick: it had been taken out of his ſtudy. The king would have the judges give their opinion of this affair privately and apart; which my lord Coke refuſed to do, as a thing of dangerous tendency. Peacham was found guilty of high treaſon; as was Algernon-Sidney for the like crime, in Charles the ſecond's time.

[b] Sir John Dodderidge was born in Devonſhire, and ſucceſſively admitted in Exeter college Oxford, and the Middle Temple, London: where having acquired the reputation of being a very great common and civil lawyer, as well as a general ſcholar, he was made ſerjeant at law 1 *Jacobi*, then the king's ſolicitor, and after that the king's ſerjeant, till he was advanced to be one of the judges of the king's bench; where he ſat many years. He died 13 Sept. 1628, in the 73d year of his age, and was ſucceeded by Sir George Crook, who tells us, Sir John Dodderidge was a man of great knowledge, as well in the common law, as in other ſciences, and divinity. *Stephens.*

[c] Sir John Crook, eldeſt ſon of Sir John Crook of Chilton in Buckinghamſhire, inherited his father's virtues and fortunes; and was very famous for his wiſdom, eloquence, and knowledge in our laws: who being Speaker of the houſe of commons in the laſt parliament of Queen Elizabeth, had from her this commendation at the end thereof; that he had proceeded therein with ſuch wiſdom and diſcretion, that none before him had deſerved better. After he had been recorder of London, and ſerjeant at law, he was 5 *Jacobi* made one of the juſtices of the king's bench; where he continued till his death, 23 Jan. 1619. He was brother to Sir George Crook ſo well known to the profeſſors of the common law by his three large volumes of reports: which Sir George was one of the judges of the court of common pleas, in the latter end of the reign of king James, and in a few years after removed into the king's bench; where he ſat till the year 1641, when by reaſon of his great age and infirmities, the king at his own requeſt gave him a gracious diſcharge, as appears in the preface to one of his books, where a due character is given of his virtues by his ſon-in-law Sir Harbottle Grimſton, late maſter of the rolls. But certainly nothing can raiſe in us a more lively idea of his merit, than part of a letter written to the duke of Buckingham, by the biſhop of Lincoln lord keeper of the great ſeal, which I copied from his own hand.

ton, [a] who is a ſoft man, ſeemed deſirous firſt to confer; alledging that the other three judges had all ſerved the crown before they were judges, but that he had not been much acquainted with buſineſs of this nature.

We purpoſe therefore forthwith, they ſhall be made acquainted with the papers; and if that could be done as ſuddenly as this was, I ſhould make ſmall doubt of their opinions: and howſoever, I hope, force of law and precedent will bind them to the truth: neither am I wholly out of hope, that my lord Coke himſelf, when I have in ſome dark manner put him in doubt that he ſhall be left alone, will not continue ſingular.

For Owen, I know not the reaſon why there ſhould have been no mention made thereof in the laſt advertiſement: for I muſt ſay for myſelf, that I have loſt no moment of time in it, as my lord of Canterbury can bear me witneſs. For having received from my lord an additional of great importance; which was, that Owen of his own accord after examination ſhould compare the caſe of your Majeſty (if you were excommunicate) to the caſe of a priſoner condemned at the bar; which additional was ſubſcribed by one witneſs; but yet I perceived it was ſpoken aloud, and in the hearing of others; I preſently ſent down a copy thereof, which is now come up, atteſted with the hands of three more, leſt there ſhould have been any ſcruple of *ſingularis teſtis*; ſo as for this caſe I may ſay, *omnia parata*; and we expect but a direction from your Majeſty for the acquainting the judges ſeverally; or the four judges of the king's bench, as your Majeſty ſhall think good.

I forget not, nor forſlow not, your Majeſty's commandment touching recuſants; of which, when it is ripe, I will give your Majeſty a true account, and what is poſſible to be done, and where the impediment is. Mr. Secretary bringeth *bonam voluntatem*, but he is not verſed much in theſe things: and ſometimes urgeth the concluſion without the premiſſes, and by haſte hindereth. It is my lord treaſurer, and the exchequer muſt help it, if it be holpen. I have heard more ways than one, of an offer of 20000 *l. per annum*, for farming the penalties of recuſants, not including any offence capital, or of *praemunire*; wherein I will preſume to ſay, that my poor endeavours, ſince I was by your great and ſole grace your attorney, have been no ſmall ſpurs to make them feel your laws, and ſeek this redemption; wherein I muſt alſo ſay, my lord Coke hath done his part. And I do aſſure your Majeſty, I know it ſomewhat inwardly and groundedly, that by the courſes we have taken they conform daily and in great numbers; and I would to God it were as well a converſion as a conformity: but if it ſhould die by diſpenſation or diſſimulation, then I fear that whereas your Majeſty hath now ſo many ill ſubjects poor and detected, you ſhall then have them rich and diſſembled. And therefore I hold this offer very conſiderable, of ſo great an increaſe of revenue: if it can paſs the fiery trial of religion and honour, which I wiſh all projects may paſs.

Thus, in as much as I have made to your Majeſty ſomewhat a naked and particular account of buſineſs, I hope your Majeſty will uſe it accordingly. God preſerve your Majeſty.

Your Majeſty's moſt humble and devoted ſubject and ſervant,

Jan. 27. 1614. FR. BACON.

CXIII.

May it pleaſe your Grace, *Weſtminſter* coll. Feb. 11. 1624.

"I Will not trouble your grace with any long congratulation, for the honour your grace hath gained, in the "preferring of this moſt worthy man Sir George Crook to a judge his place. I know you muſt meet "with the applauſe of this act from every man that cometh from hence. In good faith I never obſerved "in all my ſmall experience any accident in this kind, ſo generally and univerſally accompanied with the "acclamation of all kind of people.

"I am importuned by the reſt of the judges of the common pleas, to return their moſt humble and "hearty thanks to the king's majeſty for his choice, and to aſſure his majeſty, that though his majeſty hath "been extraordinary fortunate (above all his predeceſſors) in the continual election of moſt worthy judges; "yet hath his majeſty never placed upon any bench, a man of more integrity and ſufficiency than this gen-"tleman: for which act they do with tears in their eyes praiſe and bleſs him." *Stephens.*

[a] This expreſſion is to be underſtood in a favourable ſenſe, ſince Sir George Crook gives a more than ordinary character of him. *Mem.* That in Hilary term, 21 Jac. Sir Robert Houghton died at Serjeants-Inn in Chancery-lane, being a moſt reverend, prudent, learned, and temperate judge, and inferiour to none of his time. *Stephens.*

CXIII. To the KING.

It may pleaſe your excellent Majeſty,

BECAUSE I know your Majeſty would be glad to hear how it is with my lord chancellor; and that it pleaſed him, out of his ancient and great love to me (which many times in ſickneſs appeareth moſt) to admit me to a great deal of ſpeech with him this afternoon, which during theſe three days he hath ſcarcely done to any, I thought it might be pleaſing to your Majeſty to certify you how I found him. I found him in bed, but his ſpirits freſh and good, ſpeaking ſtoutly, and without being ſpent or weary; and both willing and beginning of himſelf to ſpeak, but wholly of your Majeſty's buſineſs: wherein I cannot forget to relate this particular; that he wiſhed, that his ſentencing of O. S. at the day appointed might be his laſt work, to conclude his ſervices, and expreſs his affection towards your Majeſty. I told him, I knew your Majeſty would be very deſirous of his preſence that day, ſo it might be without prejudice; but otherwiſe your Majeſty eſteemed a ſervant more than a ſervice, eſpecially ſuch a ſervant. Not to trouble your Majeſty, though good ſpirits in ſickneſs be uncertain kalendars, yet I have very good comfort of him, and I hope by that day, *etc.*

Mr. Oliver St. John.

Jan. 29. 1614.

CXIV. To the KING, touching Peacham, *etc.*

It may pleaſe your excellent Majeſty,

I Received this morning, by Mr. Murray, a meſſage from your Majeſty, of ſome warrant and confidence that I ſhould advertiſe your Majeſty of your buſineſs, wherein I had part: wherein, I am firſt humbly to thank your Majeſty for your good acceptation of my endeavours and ſervice, which I am not able to furniſh with any other quality, ſave faith and diligence.

For Peacham's caſe, I have, ſince my laſt letter, been with my lord Coke twice; once before Mr. Secretary's going down to your Majeſty, and once ſince, which was yeſterday: at the former of which times I delivered him Peacham's papers; and at this latter the precedents, which I had with care gathered and ſelected: for theſe degrees and order the buſineſs required.

At the former I told him that he knew my errand, which ſtood upon two points; the one to inform him of the particular caſe of Peacham's treaſons (for I never give it other word to him) the other, to receive his opinion to myſelf, and in ſecret, according to my commiſſion from your Majeſty.

At the former time he fell upon the ſame allegation which he had begun at the council-table; that judges were not to give opinion by fractions, but entirely according to the vote whereupon they ſhould ſettle upon conference: and that this auricular taking of opinions, ſingle and apart, was new and dangerous; and other words more vehement than I repeat.

I replied in civil and plain terms, that I wiſhed his lordſhip, in my love to him, to think better of it; for that this, that his lordſhip was pleaſed to put into great words, ſeemed to me and my fellows, when we ſpake of it amongſt ourſelves, a reaſonable and familiar matter, for a king to conſult with his judges, either aſſembled or ſelected, or one by one. And then, to give him a little out-let to ſave his firſt opinion (wherewith he is moſt commonly in love) I added, that judges ſometimes might make a ſuit to be ſpared for their opinion, till they had ſpoken with their brethren; but if the king, upon his own princely judgment, for reaſon of eſtate, ſhould think it fit to have it otherwiſe, and ſhould ſo demand it, there was no declining: nay, that it touched upon a violation of their oath, which was to counſel the king, without diſtinction whether it were jointly or ſeverally. Thereupon, I put him the caſe of the privy council, as if your Majeſty ſhould be pleaſed to command any of them to deliver their opinion apart and in private; whether it were a good anſwer to

deny it, otherwiſe than if it were propounded at the table. To this he ſaid, that the caſes were not alike, becauſe this concerned life. To which I replied, that queſtions of eſtate might concern thouſands of lives, and many things more precious than the life of a particular; as war, and peace, and the like.

To conclude, his lordſhip, *tanquam exitum quaerens*, deſired me for the time to leave with him the papers, without preſſing him to conſent to deliver a private opinion till he had peruſed them. I ſaid I would; and the more willingly, becauſe I thought his lordſhip, upon due conſideration of the papers, would find the caſe to be ſo clear a caſe of treaſon, as he would make no difficulty to deliver his opinion in private; and ſo I was perſuaded of the reſt of the judges of the king's bench, who likewiſe (as I partly underſtood) made no ſcruple to deliver their opinion in private: whereunto he ſaid (which I noted well) that his brethren were wiſe men, and that they might make a ſhew as if they would give an opinion, as was required; but the end would be, that it would come to this: they would ſay, they doubted of it, and ſo pray advice with the reſt. But to this I anſwered, that I was ſorry to hear him ſay ſo much, leſt, if it came ſo to paſs, ſome that loved him not might make a conſtruction, that that which he had foretold, he had wrought. Thus your Majeſty ſees, that, as Solomon ſaith, *Greſſus nolentis tanquam in ſepi ſpinarum*, it catcheth upon every thing.

The latter meeting is yet of more importance; for then, coming armed with divers precedents, I thought to ſet in with the beſt ſtrength I could, and ſaid, that before I deſcended to the record, I would break the caſe to him thus: That it was true we were to proceed upon the ancient ſtatute of king Edward the third, becauſe other temporary ſtatutes were gone; and therefore it muſt be ſaid in the indictment, *Imaginatus eſt et compaſſavit mortem et finalem deſtructionem domini regis:* then muſt the particular treaſons follow in this manner, *viz. Et quod ad perimplendum nefandum propoſitum ſuum, compoſuit et conſcripſit quendam deteſtabilem et venenoſum libellum, ſive ſcriptum, in quo, inter alia proditoria, continetur, etc.* And then the principal paſſages of treaſon, taken forth of the papers, are to be entered in *haec verba*; and with a concluſion in the end, *Ad intentionem quod ligeus populus et veri ſubditi domini regis cordialem ſuum amorem a domino rege retraherent, et ipſum dominum regem relinquerent, et guerram et inſurrectionem contra eum levarent et facerent, etc.* I have in this form followed the ancient ſtyle of the indictments for brevity ſake, though when we come to the buſineſs itſelf, we ſhall enlarge it according to the uſe of the later times. This I repreſented to him (being a thing he is well acquainted with) that he might perceive the platform of that was intended, without any miſtaking or obſcurity. But then I fell to the matter itſelf, to lock him in as much as I could, *viz.*

That there be four means or manners, whereby the death of the king is compaſſed and imagined.

The firſt, by ſome particular fact or plot.

The ſecond, by diſabling his title; as by affirming, that he is not lawful king; or that another ought to be king; or that he is an uſurper; or a baſtard; or the like.

The third, by ſubjecting his title to the pope; and thereby making him of an abſolute king a conditional king.

The fourth, by diſabling his regiment, and making him appear to be incapable or indign to reign.

Theſe things I relate to your Majeſty in ſum, as is fit; which, when I opened to my lord, I did inſiſt a little more upon, with more efficacy and edge, and authority of law and record than I can now expreſs.

Then I placed Peacham's treaſon within the laſt diviſion, agreeable to divers precedents, whereof I had the records ready; and concluded, that your Majeſty's ſafety and life and authority was thus by law inſconſed and quartered; and that it was in vain to fortify on three of the ſides, and ſo leave you open on the fourth.

It is true, he heard me in a grave faſhion more than accuſtomed, and took a pen and took notes of my diviſions; and when he read the precedents and records, would ſay, This you mean falleth within your firſt, or your ſecond, diviſion. In the end, I expreſsly demanded his opinion, as that whereto both he and I was enjoined. But he deſired me to leave the precedents with him, that he might adviſe upon them. I told him, the reſt of my fellows would diſpatch their part, and I ſhould be behind with mine; which I perſuaded myſelf your Majeſty would impute rather to his backwardneſs than my negligence. He ſaid, as ſoon as I ſhould underſtand that the reſt were ready, he would not be long after with his opinion.

For Mr. St. John, your Majeſty knoweth, the day draweth on; and my lord chancellor's recovery, the ſeaſon, and his age, promiſing not to be too haſty. I ſpake with him on Sunday, at what time I found him in bed, but his ſpirits ſtrong, and not ſpent or wearied, and ſpake wholly of your buſineſs, leading me from one matter to another; and wiſhed and ſeemed to hope, that he might attend the day for O. S. and it were (as he ſaid) to be his laſt work to conclude his ſervices, and expreſs his affection towards your Majeſty. I preſumed to ſay to him, that I knew your Majeſty would be exceeding deſirous of his being preſent that day, ſo as that it might be without prejudice to his continuance; but that otherwiſe your Majeſty eſteemed a ſervant more than a ſervice, eſpecially ſuch a ſervant. Surely in mine opinion your Majeſty were better put off the day than want his preſence, conſidering the cauſe of the putting off is ſo notorious; and then the capital and the criminal may come together the next term.

I have not been unprofitable in helping to diſcover and examine, within theſe few days, a late patent, by ſurreption obtained from your Majeſty, of the greateſt foreſt in England worth 30,000 *l.* under colour of a defective title for a matter of 400 *l.* The perſon muſt be named, becauſe the patent muſt be queſtioned. It is a great perſon, my lord of Shrewſbury; or rather (as I think) a greater than he, which is my lady of [a] Shrewſbury. But I humbly pray

[a] That ſhe was a woman of intrigue, and, as Camden ſays in his Annals of King James, *rebus turbandis nata*, will appear from her conduct relating to the king's and her kinſwoman the lady Arabella: for having been the great inſtrument of her marriage with Sir William Seymour, afterwards earl and marquis of Hertford, and of procuring her eſcape from the Tower; ſhe was convened before the privy council, and for refuſing to give any anſwer in a matter which ſo nearly concerned the ſtate, ſhe was fined in the ſtar-chamber: and the charge which was then given againſt her, printed in the Cabala, p. 365. was I doubt not (ſays Mr. Stephens) made by Sir Francis Bacon. But as if this was not a ſufficient warning, ſhe afterwards reported that the lady Arabella left a child by her huſband; for which and her repeated obſtinacy ſhe incurred a greater cenſure in the ſame court. That charge, whether Sir Francis Bacon's or not, is as follows:

YOUR lordſhips do obſerve the nature of this charge: My lady of Shrewſbury, a lady wiſe, and that ought to know what duty requireth, is charged to have refuſed, and to have perſiſted in refuſal to anſwer, and to be examined in a high cauſe of ſtate; being examined by the council-table, which is a repreſentative body of the king. The nature of the cauſe, upon which ſhe was examined, is an eſſential point, which doth aggravate and increaſe this contempt and preſumption; and therefore of neceſſity with that we muſt begin.

How graciouſly and parent-like his majeſty uſed the lady Arabella before ſhe gave him cauſe of indignation, the world knoweth.

My lady notwithſtanding, extremely ill-adviſed, tranſacted the moſt weighty and binding part and action of her life, which is her marriage, without acquainting his majeſty; which had been a neglect even to a mean parent: but being to our ſovereign, and ſhe ſtanding ſo near to his majeſty as ſhe doth, and then chuſing ſuch a condition as it pleaſed her to chuſe, all parties laid together, how dangerous it was, my lady might have read it in the fortune of that houſe wherewith ſhe is matched; for it was not unlike the caſe of Mr. Seymour's grandmother.

The king nevertheleſs ſo remember'd he was a king, as he forgot not he was a kinſman, and placed her only *ſub liberâ cuſtodia*.

But now did my lady accumulate and heap up this offence with a far greater than the former, by ſeeking to withdraw herſelf out of the king's power into foreign parts.

That this flight or eſcape into foreign parts might have been ſeed of trouble to this ſtate, is a matter whereof the conceit of a vulgar perſon is not uncapable.

For although my lady ſhould have put on a mind to continue her loyalty, as nature and duty did bind her; yet when ſhe was in another ſphere, ſhe muſt have moved in the motion of that orb, and not of the planet itſelf: and God forbid the King's felicity ſhould be ſo little, as he ſhould not have envy and enviers enough in foreign parts.

It is true, if any foreigner had wrought upon this occaſion, I do not doubt but the intent would have been, as the prophet ſaith, *They have conceived miſchief, and brought forth a vain thing*. But yet your lordſhips know that it is wiſdom in princes, and it is a watch they owe to themſelves and to their people, to ſtop

pray your Majeſty to know this firſt from my lord treaſurer, who methinks groweth even ſtudious in your buſineſs. God preſerve your Majeſty.

Your Majeſty's moſt humble and devoted ſubject and ſervant,

Jan. 31. 1614. FR. BACON.

The rather, in regard of Mr. Murray's abſence, I humbly pray your Majeſty to have a little regard to this letter.

ſtop the beginnings of evils, and not to deſpiſe them. Seneca ſaith well, *Non jam amplius levia ſunt pericula, ſi levia videantur*; dangers ceaſe to be light, becauſe by deſpiſing they grow and gather ſtrength.

And accordingly hath been the practice both of the wiſeſt and ſtouteſt princes to hold for matter pregnant of peril, to have any near them in blood to fly into foreign parts. Wherein I will not wander; but take the example of King Henry the ſeventh, a prince not unfit to be parallel'd with his majeſty; I mean not the particular of Perkin Warbeck, for he was but an idol or a diſguiſe; but the example I mean, is that of the earl of Suffolk, whom the king extorted from Philip of Auſtria. The ſtory is memorable, that Philip, after the death of Iſabella, coming to take poſſeſſion of his kingdom of Caſtile (which was but matrimonial to his father-in-law Ferdinando of Aragon) was caſt by weather upon the coaſt of * Weymouth, where the Italian ſtory ſaith, king Henry uſed him in all things elſe as a prince, but in one thing as a priſoner; for he forced upon him a promiſe to reſtore the earl of Suffolk that was fled into Flanders; and yet this I note was in the 21ſt year of his reign, when the king had a goodly prince at man's eſtate, beſides his daughters, nay, and the whole line of Clarence nearer in title; for that earl of Suffolk was deſcended of a ſiſter of Edward the fourth: ſo far off did that king take his aim. To this action of ſo deep conſequence, it appeareth, you, my lady of Shrewſbury, were privy, not upon foreign ſuſpicions or ſtrained inferences, but upon vehement preſumptions, now clear and particular teſtimony, as hath been opened to you; ſo as the king had not only reaſon to examine you upon it, but to have proceeded with you upon it as for a great contempt; which if it be reſerved for the preſent, your ladyſhip is to underſtand it aright, that it is not defect of proof, but abundance of grace that is the cauſe of this proceeding; and your ladyſhip ſhall do well to ſee into what danger you have brought yourſelf. All offences conſiſt of the fact which is open, and the intent which is ſecret; this fact of conſpiring in the flight of this lady may bear a hard and gentler conſtruction; if upon overmuch affection to your kinſwoman, gentler; if upon practice or other end, harder; you muſt take heed how you enter into ſuch actions, whereof if the hidden part be drawn unto that which is open, it may be your overthrow; which I ſpeak not by way of charge, but by way of caution.

* See Vol. II. p. 349.

For that which you are properly charged with, you muſt know that all ſubjects, without diſtinction of degrees, owe to the king tribute and ſervice, not only of their deed and hand, but of their knowledge and diſcovery.

If there be any thing that imports the king's ſervice, they ought themſelves undemanded to impart it; much more if they be called and examined; whether it be of their own fact or of another's, they ought to make direct anſwer: neither was there ever any ſubject brought in cauſes of eſtate to trial judicial, but firſt he paſſed examination; for examination is the entrance of juſtice in criminal cauſes; it is one of the eyes of the king's politick body; there are but two, information and examination; it may not be endured that one of the lights be put out by your example

Your excuſes are not worthy your own judgment; raſh vows of lawful things are to be kept, but unlawful vows not; your own divines will tell you ſo For your examples, they are ſome erroneous traditions. My lord of Pembroke ſpake ſomewhat that he was unlettered, and it was but when he was examined by one private counſellor, to whom he took exception: that of my lord Lumley is a fiction; the pre-eminences of nobility I would hold with to the laſt grain; but every day's experience is to the contrary: nay, you may learn duty of my lady Arabella herſelf, a lady of the blood, of an higher rank than yourſelf, who declining (and yet that but by requeſt neither) to declare of your fact, yieldeth ingenuouſly to be examined of her own. I do not doubt but by this time you ſee both your own error, and the king's grace in proceeding with you in this manner.

N. B. See the proclamation for apprehending the lady Arabella, and William Seymour, ſecond ſon of the lord Beauchamp, dated June 4. 1611, who had made their eſcape the day before, Rymer, XVI. p. 710. *Stephens.*

CXV. To the KING, touching my Lord Chancellor's amendment, *etc.*

It may pleaſe your excellent Majeſty,

MY lord chancellor ſent for me to ſpeak with me this morning, about eight of the clock. I perceive he hath now that *ſignum ſanitatis*, as to feel better his former weakneſs: for it is true, I did a little miſtruſt that it was but a boutade of deſire and good ſpirit, when he promis'd himſelf ſtrength for Friday, tho' I was won and carried with it. But now I find him well inclined to uſe (ſhould I ſay) your liberty, or rather your interdict, ſignified by Mr. Secretary from your Majeſty. His lordſhip ſhewed me alſo your own letter, whereof he had told me before, but had not ſhewed it me. What ſhall I ſay? I do much admire your goodneſs for writing ſuch a letter at ſuch a time.

He had ſent alſo to my lord treaſurer, to deſire him to come to him about that time. His lordſhip came; and, not to trouble your Majeſty with circumſtances, both their lordſhips concluded, myſelf preſent and concurring, That it

could be no prejudice to your Majeſty's ſervice to put off the day for [a] Mr. St. John till the next term: the rather, becauſe there are ſeven of your privy-council, which are at leaſt *numerus* and part of the court, which are by infirmity like to be abſent; that is, my lord chancellor, my lord admiral, my lord of Shrewſbury, my lord of Exeter, my lord Zouch, my lord Stanhope, and Mr. Chancellor of the duchy; wherefore they agreed to hold a council to-morrow in the afternoon for that purpoſe.

It is true, that I was always of opinion that it was no time loſt; and I do think ſo the rather, becauſe I could be content, that the matter of Peacham were firſt ſettled and put to a point. For there be perchance, that would make the example upon Mr. St. John to ſtand for all. For Peacham, I expect ſome account from my fellows this day; if it ſhould fall out otherwiſe, then I hope it may not be left ſo. Your Majeſty, in your laſt letter, very wiſely put in a disjunctive, that the judges ſhould deliver an opinion privately, either to my lord chancellor or to ourſelves diſtributed: his ſickneſs made the latter way to be taken; but the other may be reſerved with ſome accommodating, when we ſee the ſucceſs of the former.

I am appointed this day to attend my lord treaſurer for a propoſition of raiſing profit and revenue by infranchiſing copyholders. I am right glad to ſee the patrimonial part of your revenue well look'd into, as well as the fiſcal: and I hope it will ſo be in other parts as well as this. God preſerve your Majeſty.

Your Majeſty's moſt humble and devoted ſubject and ſervant,

Feb. 7. 1614. FR. BACON.

[a] In 1614, a benevolence was ſet on foot. Mr. Oliver St. John gave his opinion publickly, that it was againſt law, reaſon, and religion; for which he was condemned in a fine of five thouſand pounds, and to be impriſoned during the king's pleaſure.

CXVI. To the KING, concerning Owen's cauſe, *etc.*

It may pleaſe your excellent Majeſty,

MYſelf, with the reſt of your counſel learned, conferred with my lord Coke, and the reſt of the judges of the king's bench only, being met at my lord's chamber, concerning the buſineſs of Owen. For although it be true, that your Majeſty in your letter did mention that the ſame courſe might be held in the taking of opinions apart in this, which was preſcribed and uſed in Peacham's cauſe; yet both my lords of the council, and we amongſt our ſelves, holding it, in a caſe ſo clear, not needful; but rather that it would import a diffidence in us, and deprive us of the means to debate it with the judges (if cauſe were) more ſtrongly (which is ſomewhat) we thought beſt rather to uſe this form.

The judges deſired us to leave the examinations and papers with them for ſome little time, to conſider (which is a thing they uſe) but, I conceive, there will be no manner of queſtion made of it. My lord chief juſtice, to ſhew forwardneſs (as I interpret it) ſhewed us paſſages of Suarez and others, thereby to prove, that though your Majeſty ſtood not excommunicate by particular ſentence, yet by the general bulls of *Coena Domini*, and others, you were upon the matter excommunicate; and therefore, that the treaſon was as *de praeſenti*. But I (that foreſee that if that courſe ſhould be held, when it cometh to a publick day, to diſſeminate to the vulgar an opinion, that your Majeſty's caſe is all one, as if you were *de facto* particularly and expreſly excommunicate; it would but increaſe the danger of your perſon with thoſe that are deſperate papiſts; and that it is needleſs) commended my lord's diligence, but withal put it by; and fell upon the other courſe (which is the true way) that is, that whoſoever ſhall affirm, *in diem*, or *ſub conditione*, that your Majeſty may be deſtroyed, is a traytor *de praeſenti*; for that he maketh you but tenant for life, at the will of another. And I put the duke of Buckingham's caſe, who ſaid, that if the king cauſed him to be arreſted of treaſon, he would ſtab him;

him; and the caſe of the impoſtreſs Elizabeth Barton, that ſaid, that if king Henry the eighth took not his wife again, Katherine dowager, he ſhould be no longer king; and the like.

It may be theſe particulars are not worth the relating: but becauſe I find nothing in the world ſo important to your ſervice, as to have you throughly informed (the ability of your direction conſidered) it maketh me thus to do; moſt humbly praying your Majeſty to admoniſh me, if I be over-troubleſome.

For Peacham, the reſt of my fellows are ready to make their report to your Majeſty, at ſuch time, and in ſuch manner, as your Majeſty ſhall require it. Myſelf yeſterday took my lord Coke aſide, after the reſt were gone, and told him, all the reſt were ready, and I was now to require his lordſhip's opinion, according to my commiſſion. He ſaid, I ſhould have it; and repeated that twice or thrice, as thinking he had gone too far in that kind of negative (to deliver any opinion apart) before; and ſaid, he would tell it me within a very ſhort time, though he were not that inſtant ready. I have toſſed this buſineſs *in omnes partes*, whereof I will give your Majeſty knowledge when time ſerveth. God preſerve your Majeſty.

Your Majeſty's moſt humble and devoted ſubject and ſervant,

Febr. 11, 1614. FR. BACON.

CXVII. To the KING.

It may pleaſe your excellent Majeſty,

I Send your Majeſty encloſed my lord Coke's anſwers; I will not call them reſcripts, much leſs oracles. They are of his own hand, and offered to me as they are in writing; though I am glad of it for mine own diſcharge. I thought it my duty, as ſoon as I received them, inſtantly to ſend them to your Majeſty; and forbear, for the preſent, to ſpeak farther of them. I, for my part (though this Muſcovia weather be a little too hard for my conſtitution) was ready to have waited upon your Majeſty this day, all reſpects ſet aſide; but my lord treaſurer, in reſpect of the ſeaſon and much other buſineſs, was willing to ſave me. I will only conclude touching theſe papers with a text, divided I cannot ſay, *Oportet iſthaec fieri*; but I may ſay, *Finis autem nondum*. God preſerve your Majeſty.

Your Majeſty's moſt humble and devoted ſubject and ſervant,

14 Feb. 1614. FR. BACON.

CXVIII. To the KING, of revenue and profit.

It may pleaſe your Majeſty,

I May remember what Tacitus ſaith, by occaſion that Tiberius was often and long abſent from Rome. *In urbe, et parva et magna negotia imperatorem ſimul premunt:* but, ſaith he, *In receſſu, dimiſſis rebus minoris momenti, ſummae rerum magnarum magis agitantur.* This maketh me think it ſhall be no incivility to trouble your Majeſty with buſineſs, during your abode from London; knowing that your Majeſty's meditations are the principal wheel of your eſtate; and being warranted from a former commandment which I received from you.

I do now only ſend your Majeſty theſe papers encloſed, becauſe I do greatly deſire ſo far forth to preſerve my credit with you, as thus, that whereas lately (perhaps out of too much deſire, which induceth too much belief) I was bold to ſay, that I thought it as eaſy for your Majeſty to come out of want, as to go forth of your gallery; your Majeſty would not take me for a dreamer, or a projector; I ſend your Majeſty therefore ſome grounds of my hopes. And for that paper which I have gathered of increaſements ſperate, I beſeech you to give me leave to think, that if any of the particulars do fail, it will be rather for want of workmanſhip in thoſe that ſhall deal in them, than want of materials

materials in the things themſelves. The other paper hath many diſcarding cards; and I ſend it chiefly, that your Majeſty may be the leſs ſurprized by projectors; who pretend ſometimes great diſcoveries and inventions in things, that have been propounded, and, perhaps, after a better faſhion, long ſince. God Almighty preſerve your Majeſty.

Your Majeſty's moſt humble and devoted ſubject and ſervant,

25 April 1615. FR. BACON.

CXIX. To the KING.

It may pleaſe your excellent Majeſty,

MR. St. John his day is paſt, and well paſt. I hold it to be *Janus bifrons*; it hath a good aſpect to that which is paſt, and to the future; and doth both ſatisfy and prepare. All did well: my lord chief juſtice delivered the law for the benevolence ſtrongly; I would he had done it timely. [a] Mr. Chancellor of the exchequer ſpake finely, ſomewhat after the manner of my late || lord privy ſeal; not all out ſo ſharply, but as elegantly. Sir Thomas Lake (who is alſo new in that court) did very well, familiarly and counſellor-like [b]. My lord of Pembroke (who is likewiſe a ſtranger there) did extraordinarily well, and became himſelf well, and had an evident applauſe [c]. I meant well alſo; and becauſe my information was the ground; having ſpoken out of a few heads which I had gathered (for I ſeldom do more) I ſet down, as ſoon as I came home, curſorily, † a frame of that I had ſaid; though I perſuade myſelf I ſpake it with more life. I have ſent it to Mr. Murray ſealed; if your Majeſty have ſo much idle time to look upon it, it may give ſome light of the day's work: but I moſt humbly pray your Majeſty to pardon the errors. God preſerve you ever.

|| Late earl of Northampton.

† Printed p. 205. of this Vol.

Your Majeſty's moſt humble ſubject, and devoted ſervant,

April 29. 1615. FR. BACON.

[a] The chancellor of the exchequer here meant was Sir Fulke Greville, who being early initiated into the court of Queen Elizabeth, became a polite and fine gentleman; and in the 18th of King James was created Lord Brooke. He erected a noble monument for himſelf on the north-ſide of Warwick church (which hath eſcap'd the late deſolation) with this well-known inſcription, "Fulke Greville, ſervant to Queen Elizabeth, "counſellor to King James, and friend to Sir Philip Sidney." Nor is he leſs remembered by the monument he has left in his writings and poems, chiefly compoſed in his youth, and in familiar exerciſes with the gentleman I have before mentioned. *Stephens.*

[b] Sir Thomas Lake was about this time made one of the principal ſecretaries of ſtate, as he had been formerly Latin ſecretary to Queen Elizabeth, and before that time bred under Sir Francis Walſingham. But in the year 1618, falling into the king's diſpleaſure, and being engaged in the quarrels of his wife and daughter the lady Roos, with the counteſs of Exeter; he was at firſt ſuſpended from the execution of his place, and afterwards removed, and deeply cenſured and fined in the ſtar-chamber; although it is ſaid the king then gave him in open court this publick eulogy, that he was a miniſter of ſtate fit to ſerve the greateſt prince in Europe. Whilſt this ſtorm was hanging over his head, he writ many letters to the king, and marquiſs of Buckingham, which I have ſeen, complaining of his misfortune, that his ruin was likely to proceed from the aſſiſtance he gave to his neareſt relations. *Stephens.*

[c] William earl of Pembroke, ſon to Henry Herbert earl of Pembroke, lord preſident of the council in the marches of Wales, by Mary his wife, a lady in whom the Muſes and Graces ſeem'd to meet; whoſe very letters, in the judgment of one who ſaw many of them, declared her to be miſtreſs of a pen not inferior to that of her brother, the admirable Sir Philip Sidney, and to whom he addreſs'd his Arcadia. Nor did this gentleman degenerate from their wit and ſpirit, as his own poems, his great patronage of learned men, and reſolute oppoſition to the Spaniſh match, did, among other inſtances, fully prove. In the year 1616, he was made lord chamberlain, and choſen chancellor of the univerſity of Oxford. He died ſuddenly on the 10th of April 1630, having juſt compleated fifty years: but his only ſon deceaſing a child before him, his eſtate and honours deſcended upon his younger brother, Philip Earl of Montgomery, the lineal anceſtor of the preſent noble and learned earl. *Stephens.*

CXX. To the KING, concerning the new company.

It may pleaſe your moſt excellent Majeſty,

YOUR Majeſty ſhall ſhortly receive the bill for the incorporation of the new company [a], together with a bill for the privy ſeal, being a dependency

[a] Among other projects for ſupplying his Majeſty with money, after his abrupt diſſolution of the parliament, there was one propoſed through the lord treaſurer's means by Sir William Cockaine, an alderman of London.

dency thereof: for this morning I ſubſcribed and docketted them both. I think it therefore now time to repreſent to your Majeſty's high wiſdom that which I conceive, and have had long in my mind, concerning your Majeſty's ſervice, and honourable profit in this buſineſs.

This project, which hath proceeded from a worthy ſervice of the lord treaſurer, I have from the beginning conſtantly affected; as may well appear by my ſundry labours from time to time in the ſame: for I hold it a worthy character of your Majeſty's reign and times; inſomuch, as though your Majeſty might have at this time (as is ſpoken) a great annual benefit for the quitting of it; yet I ſhall never be the man that ſhould wiſh your Majeſty to deprive yourſelf of that beatitude, *Beatius eſt dare, quam accipere*, in this cauſe; but to ſacrifice your profit (though, as your Majeſty's ſtate is, it be precious to you) to ſo great a good of your kingdom: although this project is not without a profit immediate unto you, by the increaſing of cuſtoms upon the materials of dyes.

But here is the caſe: the new company by this patent and privy ſeal are to have two things, wholly diverſe from the firſt intention, or rather, *ex diametro* oppoſite unto the ſame; which nevertheleſs they muſt of neceſſity have, or elſe the work is overthrown: ſo as I may call them *mala neceſſaria*, but yet withal temporary. For as men make war to have peace; ſo theſe merchants muſt have licence for whites, to the end to baniſh whites; and they muſt have licence to uſe tenters, to the end to baniſh tenters.

This is therefore that I ſay; your Majeſty, upon theſe two points, may juſtly, and with honour, and with preſervation of your firſt intention inviolate, demand profit in the *interim*, as long as theſe unnatural points continue, and then to ceaſe. For your Majeſty may be pleaſed to obſerve, that they are to have all the old company's profit by the trade of whites; they are again to have, upon the proportion of cloths which they ſhall vend dyed and dreſſed, the Flemmings profit upon the tenter. Now then I ſay, as it had been too good huſbandry for a king to have taken profit of them, if the project could have been effected at once (as was voiced) ſo on the other ſide it might be, perchance, too little huſbandry and providence to take nothing of them, for that which is merely lucrative to them in the mean time. Nay, I ſay farther, this will greatly conduce, and be a kind of ſecurity to the end deſired. For I always feared, and do yet fear, that when men, by condition merchants, though never ſo honeſt, have gotten into their hands the trade of whites, and the diſpenſation to tenter, wherein they ſhall reap profit for that which they never ſowed; but have gotten themſelves certainties, in reſpect of the ſtate's hopes: they are like enough to ſleep upon this as upon a pillow, and to make no haſte to go on with the reſt. And though it may be ſaid, that this is a thing will eaſily appear to the ſtate, yet (no doubt) means may be deviſed and found to draw the buſineſs in length. So that I conclude, that if your Majeſty take a profit of them in the *interim* (conſidering you refuſe profit from the old company)

For the ſociety or fellowſhip of Merchant Adventurers, having enjoy'd by licence from the crown a power of exporting yearly ſeveral thouſands of Engliſh cloths undyed; it was imagin'd that the king would not only receive an increaſe in his cuſtoms by the importation of materials neceſſary for dying, but the nation a conſiderable advantage in employing the ſubject, and improving the manufacture to its utmoſt before it was exported. This propoſition being beſides attended with the offer of an immediate profit to his Majeſty, was ſoon embraced; the charter granted to the Merchant Adventurers recalled, and Sir William Cockayne and ſeveral other traders incorporated upon certain conditions, as appears in part from this letter; tho' ſome other letters in the ſame and the following year inform us, what difficulties the king and council, and indeed the whole kingdom, ſuſtain'd thereby. For the trading towns in the Low Countries and in Germany, which were the great mart and ſtaple of theſe commodities, perceiving themſelves in danger of loſing the profit, which they had long reaped by dying and dreſſing great quantities of Engliſh cloth, the Dutch prohibited the whole commodity; and the materials being either dearer here, or the manufacturers leſs ſkill'd in fixing of the colours, the vent of cloth was ſoon at a ſtand; upon which the clamour of the countries extended itſelf to the court. So that, after ſeveral attempts to carry on the deſign, Sir Fr. Bacon finding the new company variable in themſelves, and not able to comply with their propoſals, but making new and ſpringing demands, and that the whole matter was more and more perplex'd, ſent, on the 14th of October 1616, a letter to the lord Villiers, encloſing his reaſons why the new company was no longer to be truſted, but the old company to be treated with and revived. Accordingly, purſuant to a power of revocation contain'd in the new charter, it was recall'd, and a proclamation publiſh'd for reſtoring the old company, dated Aug. 12, 1617; and ſoon after another charter granted them upon their payment of 50,000 *l.* *Stephens*'s Introduct. p. 38, 39.

company) it will be both ſpur and bridle to them, to make them pace aright to your Majeſty's end.

This in all humbleneſs, according to my vowed care and fidelity, being no man's man but your Majeſty's, I preſent, leave, and ſubmit to your Majeſty's better judgment; and I could wiſh your Majeſty would ſpeak with Sir Thomas Lake in it; who, beſides his good habit which he hath in buſineſs, beareth (methinks) an indifferent hand in this particular; and (if it pleaſe your Majeſty) it may proceed as from yourſelf, and not as a motion or obſervation of mine.

Your Majeſty need not in this to be ſtraitened in time; as if this muſt be demanded or treated before you ſign their bill. For I foreſeeing this, and foreſeeing that many things might fall out which I could not foreſee, have handled it ſo, as with their good contentment there is a power of revocation inſerted into their patent. And ſo commending your Majeſty to God's bleſſed and precious cuſtody; I reſt,

Your Majeſty's moſt humble and devoted ſubject and ſervant,

Aug. 12, 1615. FR. BACON.

CXXI. To Sir GEORGE VILLIERS, about Roper's place.

SIR,

SEnding to the King upon occaſion, I would not fail to ſalute you by my letter; which, that it may be more than two lines, I add this for news; that as I was ſitting by my lord chief juſtice, upon the commiſſion for the indicting of the great perſon, one of the judges aſked him, whether Roper were dead? He ſaid, he for his part knew not; another of the judges anſwered, It ſhould concern you, my Lord, to know it. Whereupon he turned his ſpeech to me, and ſaid, No, Mr. Attorney, I will not wreſtle now in my latter times. My lord, ſaid I, you ſpeak like a wiſe man. Well, ſaith he, they have had no luck with it that have had it. I ſaid again, Thoſe days be paſt. Here you have the dialogue to make you merry. But in ſadneſs, I was glad to perceive he meant not to conteſt. I can but honour and love you, and reſt,

Your aſſured friend and ſervant,

Jan. 22, 1615. FR. BACON.

CXXII. To the KING, againſt the new company.

It may pleaſe your excellent Majeſty,

I Spake yeſterday long with my lord Coke; and for the *rege inconſulto*, I conceive by him it will be, *an amplius deliberandum cenſeo* (as I thought at firſt) ſo as for the preſent your Majeſty ſhall not need to renew your commandment of ſtay. I ſpake with him alſo about ſome propoſitions concerning your Majeſty's caſual revenue; wherein I found him to conſent with me fully, aſſuming, nevertheleſs, that he had thought of them before; but it is one thing to have the vapour of a thought, another to digeſt buſineſs aright. He, on his part, imparted to me divers things of great weight, concerning the reparation of your Majeſty's means and finances, which I heard gladly; inſomuch as he perceiving the ſame, I think was the readier to open himſelf to me in one circumſtance, which he did much inculcate. I concur fully with him, that they are to be held ſecret; for I never ſaw but that buſineſs is like a child, which is framed inviſibly in the womb; and if it come forth too ſoon, it will be abortive. I know, in moſt of them, the proſecution muſt reſt much upon myſelf. But I that had the power to prevail in the farmers caſe of the French wines, without the help of my lord Coke, ſhall be better able to go through theſe with his help, the ground being no leſs juſt. And this I ſhall ever add of mine own, that I ſhall ever reſpect your Majeſty's honour no leſs than your profit; and ſhall alſo,

alſo take care, according to my penſive manner, that that which is good for the preſent, have not in it hidden ſeeds of future inconveniences.

The matter of the new company was referred to me by the lords of the privy council; wherein, after ſome private ſpeech with Sir Lionel Cranfield, I made that report which I held moſt agreeable to truth, and your Majeſty's ſervice. If this new company break, it muſt either be put upon the patent, or upon the order made by themſelves. For the patent, I ſatisfied the board, that there was no tittle in it which was not either *verbatim* in the patent of the old company, or by ſpecial warrant from the table inſerted. My lord Coke, with much reſpect to me, acknowledged, but diſliked the old patent in itſelf, and diſclaimed his being at the table when the additions were allowed. But in my opinion (howſoever my lord Coke, to magnify his ſcience in law, draweth every thing, though ſometimes improperly and unſeaſonably, to that kind of queſtion) it is not convenient to break the buſineſs upon thoſe points. For conſidering they were but clauſes that were in the former patents, and in many other patents of companies; and that the additions likewiſe paſſed the allowance of the table, it will be but clamoured, and perhaps conceived, that to quarrel them now, is but an occaſion taken; and that the times are changed, rather than the matter. But that which preſerveth entire your Majeſty's honour, and the conſtancy of your proceedings, is to put the breach upon their orders.

For this light I gave in my report, which the table readily apprehended, and much approved; that if the table reject their orders as unlawful and unjuſt, it doth free you from their contract: for whoſoever contracteth or undertaketh any thing, is always underſtood to perform it by lawful means; ſo as they have plainly abuſed the ſtate, if that which they have undertaken be either impoſſible or unjuſt.

I am bold to preſent this conſideration to that excellent faculty of your Majeſty's judgment; becauſe I think it importeth that future good which may grow to your Majeſty in the cloſe of this buſineſs; that the falling off be without all exception. God have you in his precious cuſtody.

Your Majeſty's moſt humble and bounden ſubject and ſervant,

Feb. 3, 1615. FR. BACON.

CXXIII. To the KING, touching the chancellor's ſickneſs.

It may pleaſe your moſt excellent Majeſty,

I Am glad to underſtand by Mr. Murray, that your Majeſty accepteth well of my poor endeavours in opening unto you the paſſages of your ſervice, that buſineſs may come the leſs crude, and the more prepared to your royal judgment; the perfection whereof, as I cannot expect they ſhould ſatisfy in every particular; ſo, I hope, through my aſſiduity there will reſult a good total.

My lord chancellor's ſickneſs falleth out *duro tempore*. I have always known him a wiſe man, and of juſt elevation for monarchy; but your Majeſty's ſervice muſt not be mortal. And if you loſe him, as your Majeſty hath now of late purchaſed many hearts by depreſſing the wicked; ſo God doth miniſter unto you a counterpart to do the like, by raiſing the honeſt. God evermore preſerve your Majeſty.

Your Majeſty's moſt humble ſubject and bounden ſervant,

Feb. 9, 1615. FR. BACON.

CXXIV. To the KING.

It may pleaſe your moſt excellent Majeſty,

YOUR worthy chancellor *, I fear, goeth his laſt day. God hath hitherto uſed to weed out ſuch ſervants as grew not fit for your Majeſty; but now he hath gathered to himſelf one of the choicer plants, a true ſage, or *ſalvia*, out of your garden; but your Majeſty's ſervice muſt not be mortal.

* Chancellor Egerton.

Upon this heavy accident I pray your Majeſty, in all humbleneſs and ſincerity, to give me leave to uſe a few words: I muſt never forget, when I moved your Majeſty for the attorney's place, that it was your own ſole act, and not my lord of Somerſet's; who when he knew your Majeſty had reſolved it, thruſt himſelf into the buſineſs to gain thanks; and therefore I have no reaſon to pray to ſaints.

I ſhall now again make oblation to your Majeſty, firſt of my heart, then of my ſervice; thirdly of my place of attorney (which I think is honeſtly worth 6000 *l. per annum)* and fourthly, of my place in the ſtar-chamber, which is worth 1600 *l. per annum*; and with the favour and countenance of a chancellor much more. I hope I may be acquitted of preſumption if I think of it, both becauſe my father had the place, which is ſome civil inducement to my deſire (and I pray God your Majeſty may have twenty no worſe years in your greatneſs, than queen Elizabeth had in her model, after my father's placing) and chiefly, becauſe the chancellor's place, after it went to the law, was ever conferred upon ſome of the learned counſel, and never upon a judge. For Audeley was raiſed from king's ſerjeant; my father from attorney of the wards; Bromley from ſolicitor; Puckering from queen's ſerjeant; Egerton from maſter of the rolls, having newly left the attorney's place. Now, I beſeech your Majeſty, let me put you the preſent caſe truly. If you take my lord Coke, this will follow; firſt your Majeſty ſhall put an over-ruling nature into an over-ruling place, which may breed an extreme; next, you ſhall blunt his induſtries in matter of finances, which ſeemeth to aim at another place; and laſtly, popular men are no ſure mounters for your Majeſty's ſaddle. If you take my lord Hobart, you ſhall have a judge at the upper end of your council-board, and another at the lower end; whereby your Majeſty will find your prerogative pent: For though there ſhould be emulation between them, yet as legiſts they will agree in magnifying that wherein they are beſt; he is no ſtateſman, but an œconomiſt wholly for himſelf; ſo as your Majeſty (more than an outward form) will find little help in him for the buſineſs. If you take my lord of Canterbury, I will ſay no more, but the chancellor's place requires a whole man; and to have both juriſdictions, ſpiritual and temporal, in that height, is fit but for a king.

For myſelf, I can only preſent your Majeſty with *gloria in obſequio*[a]; yet I dare promiſe, that if I ſit in that place, your buſineſs ſhall not make ſuch ſhort turns upon you, as it doth; but when a direction is once given, it ſhall be purſued and performed, and your Majeſty ſhall only be troubled with the true care of a king, which is, to think what you would have done in chief, and not how for the paſſages.

I do preſume alſo, in reſpect of my father's memory, and that I have been always gracious in the lower houſe, I have intereſt in the gentlemen of England, and ſhall be able to do ſome good effect in rectifying that body of parliament-men, which is *cardo rerum*. For let me tell your Majeſty, that that part of the chancellor's place, which is to judge in equity between party and party, that ſame *regnum judiciale* (which ſince my father's time is but too much enlarged) concerneth your Majeſty leaſt, more than the acquitting of your conſcience for juſtice: but it is the other parts, of a moderator amongſt your council, of an overſeer over your judges, of a planter of fit juſtices and governors in the country, that importeth your affairs and theſe times moſt.

I will add alſo, that I hope by my care the inventive part of your council will be ſtrengthen'd; who now commonly do exerciſe rather their judgments than their inventions, and the inventive part cometh from projectors and private

[a] *Gloria in obſequio* is taken from the ſixth book of the Annals of Tacitus: Where, ſome perſons being accuſed for their intimacy with Sejanus, the late great favourite of the emperor Tiberius; M. Terentius, a Roman knight, did not, like others, excuſe or deny the ſame for fear of puniſhment; but doth in the ſenate make an ingenuous confeſſion thereof, and gives his reaſons why he not only courted, but rejoiced in obtaining the friendſhip of Sejanus. And then addreſſes himſelf, as if ſpeaking to Tiberius, in theſe words; *Non eſt noſtrum aeſtimare, quem ſupra caeteros, et quibus de cauſis extollas: tibi ſummum rerum judicium dii dedere; nobis* obſequii gloria *relicta eſt.* 'It does not become us to enquire into the perſon you are pleaſed to prefer 'above others, or into the reaſons: To you heaven hath given a conſummate judgment; to us there re-'mains the glory of a chearful obedience.' *Stephens.*

vate men, which cannot be ſo well; in which kind my lord of Saliſbury had a good method, if his ends had been upright.

To conclude: if I were the man I would be, I ſhould hope, that as your Majeſty hath of late won hearts by depreſſing, you ſhould in this loſe no hearts by advancing: for I ſee your people can better ſkill of *concretum* than *abſtractum*, and that the waves of their affections flow rather after perſons than things: ſo that acts of this nature (if this were one) do more good than twenty bills of grace. If God call my lord chancellor, the warrants and commiſſions which are requiſite for the taking off the ſeal, and for the working with it, and for reviving of warrants under his hand, which die with him, and the like, ſhall be in readineſs. And in this, time preſſeth more, becauſe it is the end of a term, and almoſt the beginning of the circuits; ſo that the ſeal cannot ſtand ſtill: But this may be done as heretofore by commiſſion, till your Majeſty hath reſolved of an officer. God ever preſerve your Majeſty.

Your Majeſty's moſt humble ſubject, and bounden ſervant,

Feb. 12, 1615. FR. BACON.

CXXV. A Letter to the KING,
Of my lord Chancellor's amendment, and the difference begun between the chancery and king's bench.

It may pleaſe your excellent Majeſty,

I Do find, God be thanked, a ſenſible amendment in my lord chancellor: I was with him yeſterday in private conference about half an hour; and this day again, at ſuch a time as he did ſeal, which he endured well almoſt the ſpace of an hour, though the vapour of wax be offenſive to him. He is free from a fever, perfect in his powers of memory and ſpeech; and not hollow in his voice nor look: he hath no panting or labouring reſpiration; neither are his coughs dry or weak. But whoſoever thinketh his diſeaſe is but melancholy, he maketh no true judgment of it; for it is plainly a formed and deep cough, with a pectoral ſurcharge; ſo that at times he doth almoſt *animam agere*. I forbear to advertiſe your Majeſty of the care I took to have commiſſions in readineſs, becauſe Mr. Secretary Lake hath let me underſtand he ſignified as much to your Majeſty: but I hope there ſhall be no uſe for them at this time. And as I am glad to advertiſe your Majeſty of the amendment of your chancellor's perſon, ſo I am ſorry to accompany it with an advertiſement of the ſickneſs of your chancery court, though (by the grace of God) that cure will be much eaſier than the other. It is true I did lately write to your Majeſty, that for the matter of the *Habeas corpora* (which was the third matter in law you had given me in charge) I did think the communion in ſervice between my lord chancellor and my lord chief juſtice, in the great buſineſs of examination, would ſo join them as they would not ſquare at this time; but pardon me (I humbly pray your Majeſty) if I have too reaſonable thoughts.

And yet that which happened the laſt day of the term, concerning certain indictments in the nature of *praemunire*, preferred into the king's bench, but not found; is not ſo much as is voiced abroad; though I muſt ſay, it is *omni tempore nimium, et hoc tempore alienum:* and therefore, I beſeech your Majeſty not to give any believing ear to reports, but to receive the truth from me, that am your attorney-general, and ought to ſtand indifferent for juriſdictions of all courts; which account I cannot give your Majeſty now, becauſe I was then abſent; and ſome are now abſent, which are properly and authentically to inform me touching that which paſſed. Neither let this any ways diſjoint your other buſineſs, for there is a time for all things, and this very accident may be turned to good. Not that I am of opinion that that fame cunning maxim of *Separa et impera*, which ſometimes holdeth in perſons, can well take place in juriſdictions; but becauſe ſome good occaſion by this exceſs may be taken to ſettle that, which

would have been more dangerous, if it had gone out by little and little. God ever preſerve your Majeſty.

Your Majeſty's moſt humble ſubject and moſt bounden ſervant,

Feb. 15, 1615. FR. BACON.

CXXVI. To Sir GEORGE VILLIERS.

SIR,

I Received this morning from you two letters by the ſame bearer; the one written before, the other after his majeſty had received my laſt.

In this difference between the two courts of chancery and king's bench (for ſo I had rather take it for this time, than between the perſons of my lord chancellor and my lord chief juſtice) I marvel not, if rumour get way of true relation; for I know fame hath ſwift wings, ſpecially that which hath black feathers: but within theſe two days (for ſooner I cannot be ready) I will write unto his Majeſty both the narrative truly, and my opinion ſincerely; taking much comfort that I ſerve ſuch a king as hath God's property in diſcerning truly of mens hearts. I purpoſe to ſpeak with my lord chancellor this day; and ſo to exhibit that cordial of his Majeſty's grace, as I hope that other accident will rather rouze and raiſe his ſpirit, than deject him or incline him to relapſe. Mean while I commend the wit of a mean man that ſaid this other day, "Well, the next term "you ſhall have an old man come with a beſom of wormwood in his hand, that "will ſweep away all this". For it is my lord chancellor's faſhion, ſpecially towards the ſummer, to carry a poſy of wormwood. I write this letter in haſte to return your meſſenger with it. God keep you; and long and happily may you ſerve his Majeſty.

Your true and affectionate ſervant,

Feb. 19, 1615. FR. BACON.

Sir, I thank you for your inward letter; I have burned it as you commanded: but the fire it hath kindled in me will never be extinguiſhed.

CXXVII. To Sir GEORGE VILLIERS, about ſwearing him into the privy council.

SIR,

MY lord chancellor's health growing with the days, and his reſignation being an uncertainty, I would be glad you went on with my firſt motion, my ſwearing privy councillor. This I deſire, not ſo much to make myſelf more ſure of the other, and to put it paſt competition (for herein I reſt wholly upon the king and your excellent ſelf) but becauſe I find hourly that I need this ſtrength in his majeſty's ſervice, both for my better warrant and ſatisfaction of my conſcience, that I deal not in things above my vocation; and for my better countenance and prevailing, where his majeſty's ſervice is, under any pretext, oppoſed, I would it were diſpatched. I remember a greater matter than this was diſpatched by a letter from Royſton, which was the placing of the archbiſhop that now is; and I imagine the king did it on purpoſe, that the act might appear to be his own.

My lord chancellor told me yeſterday in plain terms, that if the king would aſk his opinion touching the perſon that he would commend to ſucceed him upon death or diſability, he would name me for the fitteſt man. You may adviſe, whether uſe may not be made of this offer.

I ſent a pretty while ſince a paper to Mr. John Murray, which was indeed a little remembrance of ſome things paſt, concerning my honeſt and faithful ſervices to his majeſty; not by way of boaſting (from which I am far) but as tokens

of

of my ſtudying his ſervice uprightly and carefully. If you be pleaſed to call for the paper, which is with Mr. John Murray, and to find a fit time that his Majeſty may caſt an eye upon it, I think it will do no hurt; and I have written to Mr. Murray to deliver the paper, if you call for it. God keep you in all happineſs.

Your trueſt ſervant,

Feb. 21. 1615. FR. BACON.

CXXVIII. To the KING, of the chancery and king's bench.

It may pleaſe your moſt excellent Majeſty,

I Was yeſterday in the afternoon with my lord chancellor, according to your commandment which I received by the maſter of the horſe, and find the old man well comforted, both towards God, and towards the world: and that ſame middle comfort which is divine and human, proceeding from your Majeſty, being God's lieutenant on earth, I am perſuaded, hath been a great cauſe that ſuch a ſickneſs hath been portable to ſuch an age. I did not fail in my conjecture, that this buſineſs of the chancery hath ſtirred him; he ſheweth to deſpiſe it, but he is full of it, and almoſt like a young duelliſt that findeth himſelf behind-hand.

I will now, as your Majeſty requireth, give you a true relation of that which hath paſſed; neither will I decline your royal commandment for delivering my opinion alſo, though it be a tender ſubject to write on; but I that account my Being but as an accident to my Service, will neglect no duty upon ſelf-ſafety.

Firſt, it is neceſſary I let your Majeſty know the ground of the difference between the two courts, that your Majeſty may the better underſtand the narrative.

There was a ſtatute made 27 Edw. III. cap. 1. which (no doubt) in the principal intention thereof was ordained againſt thoſe that ſued to Rome; wherein there are words ſomewhat general againſt any "that queſtioneth or impeacheth "any judgment given in the king's courts, or in any other court." Upon theſe doubtful words (other courts) the controverſy groweth. For the ſounder interpretation taketh them to be meant of thoſe courts, which though locally they were not held at Rome, or where the pope's chair was, but here within the realm; yet in their juriſdiction had their dependance upon the court of Rome; as were the court of the legate here, and the courts of the archbiſhops and biſhops, which were then but ſubordinate judgment-ſeats to that high tribunal of Rome. And for this conſtruction, the oppoſition of the words (if they be well obſerved) between *the king's courts* and *other courts*, maketh very much; for it importeth as if thoſe other courts were not the king's courts. Alſo the main ſcope of the ſtatute fortifieth the ſame. And laſtly, the practice of many ages. The other interpretation (which cleaveth to the letter) expoundeth the king's courts to be the courts of law only, and other courts to be courts of equity, as the chancery, exchequer-chamber, duchy, *etc.* Though this alſo flieth indeed from the letter, for that all theſe are the king's courts.

There is alſo another ſtatute, which is but a ſimple prohibition, and not with a penalty of a *praemunire* (as the other is) "that after judgments given in the "king's courts, the parties ſhall be in peace, except the judgment be undone by "error, or attaint," which is a legal form of reverſal. And of this alſo I hold the ſounder interpretation to be to ſettle poſſeſſions againſt diſturbances, and not to take away remedy in equity, where thoſe judgments are obtained *ex rigore juris*, and againſt good conſcience.

But upon theſe two ſtatutes there hath been a late conceit in ſome, that if a judgment paſs at the common law againſt any, that he may not after ſue for relief in chancery; and if he doth, both he, and his counſel, and his ſolicitors, yea and the judge in equity himſelf, are within the danger of thoſe ſtatutes.

Here your Majeſty hath the true ſtate of the queſtion, which I was neceſſarily

ſarily to open to you firſt, becauſe your Majeſty calleth for this relation; not as news, but as buſineſs. Now to the hiſtorical part.

It is the courſe of the king's bench, that they give in charge to a grand jury offences of all natures, to be preſented within Middleſex, where the ſaid court is; and the manner is, to enumerate them as it were in articles. This was done by juſtice Crook, the Wedneſday before the term ended. And that article (If any man, after a judgment given, had drawn the ſaid judgment to a new examination in any other court) was by him ſpecially given in charge; which had not uſed to be given in charge before. It is true, it was not ſolemnly dwelt upon, but as it were thrown in amongſt the reſt.

The laſt day of the term (and, that which all men condemn, the ſuppoſed laſt day of my lord chancellor's life) there were two indictments preferred of *præmunire*, for ſuing in chancery after judgment in common law; the one by Rich. Glanville, the other by William Allen: the former againſt Courtney, the party in chancery, Gibb the counſellor, and Deurſt the clerk; the latter againſt alderman Bowles and Humfrey Smith, parties in chancery; ſerjeant More the counſellor, Elias Wood ſolicitor in the cauſe, and Sir John Tindal, maſter of the chancery, and an aſſeſſor to my lord chancellor.

For the caſes themſelves, it were too long to trouble your Majeſty with them; but this I will ſay, if they were ſet on that preferred them, they were the worſt marks-men that ever were that ſet them on. For there could not have been choſen two ſuch cauſes to the honour and advantage of the chancery, for the juſtneſs of the decrees, and the foulneſs and ſcandal both of fact and perſon, in thoſe that impeach the decrees.

The grand jury, conſiſting (as it ſeemeth) of very ſubſtantial and intelligent perſons, would not find the bills, notwithſtanding they were clamoured by the parties, and twice ſent back by the court; and in concluſion, reſolutely ſeventeen of nineteen found an *Ignoramus*; wherein, for that time, I think *Ignoramus* was wiſer than thoſe that know too much.

Your Majeſty will pardon me, if I be ſparing in delivering to you ſome other circumſtances of aggravation, and of concurrences of ſome like matters the ſame day; as if it had been ſome fatal conſtellation. They be not things ſo ſufficiently tried, as I dare put them into your ear.

For my opinion, I cannot but begin with this preface, that I am infinitely ſorry that your Majeſty is thus put to ſalve and cure, not only accidents of time, but errors of ſervants; for I account this a kind of ſickneſs of my lord Coke's, that comes almoſt in as ill a time as the ſickneſs of my lord chancellor. And as (I think) it was one of the wiſeſt parts that ever he played when he went down to your Majeſty to Royſton, and deſired to have my lord chancellor joined with him; ſo this was one of the weakeſt parts that ever he played, to make all the world perceive that my lord chancellor is ſever'd from him at this time.

But for that which may concern your ſervice, which is my end (leaving other men to their own ways) firſt, my opinion is plainly, that my lord Coke at this time is not to be diſgraced; both becauſe he is ſo well habituate for that which remaineth of theſe capital cauſes, and alſo for that which I find is in his breaſt touching your finances and matters of repair of your eſtate; and (if I might ſpeak it) as I think it were good his hopes were at an end in ſome kind, ſo I could wiſh they were raiſed in ſome other.

On the other ſide, this great and publick affront, not only to the reverend and well deſerving perſon of your chancellor (and at a time when he was thought to lie on dying, which was barbarous) but to your high court of chancery, which is the court of your abſolute power, may not (in my opinion) paſs lightly, nor end only in ſome formal atonement, but uſe is to be made thereof for the ſettling of your authority and ſtrengthening of your prerogative according to the true rules of monarchy.

Now to reconcile and accommodate theſe two advices, which ſeem almoſt oppoſite: firſt, your Majeſty may not ſee it (though I confeſs it be ſuſpicious) that

that my lord Coke was any way aforehand privy to that which was done; or that he did ſet it or animate it, but only took the matter as it came before him; and that his error was only, that at ſuch a time he did not divert it in ſome good manner.

Secondly, if it be true (as is reported) that any of the puiſne judges did ſtir this buſineſs; or that they did openly revile and menace the jury for doing their conſcience (as they did honeſtly and truly) I think that judge is worthy to loſe his place. And, to be plain with your Majeſty, I do not think there is any thing a greater *polychreſton*, or *ad multa utile* to your affairs, than upon a juſt and fit occaſion to make ſome example againſt the preſumption of a judge in cauſes that concern your Majeſty, whereby the whole body of thoſe magiſtrates may be contained the better in awe; and it may be this will light upon no unfit ſubject of a perſon, that is rude, and that no man cares for.

Thirdly, if there be no one ſo much in fault (which I cannot yet affirm either way, and there muſt be a juſt ground, God forbid elſe) yet I ſhould think, that the very preſumption of going ſo far, in ſo high a cauſe, deſerveth to have that done which was done in this very caſe upon the indictment of ſerjeant Heale in Queen Elizabeth's time; that the judges ſhould anſwer it upon their knees before your Majeſty or your council, and receive a ſharp admonition: at which time alſo, my lord Wray, being then chief juſtice, ſlipt the collar and was forborn.

Fourthly, for the perſons themſelves, Glanville and Allen, which are baſe fellows and turbulent, I think there will be diſcovered and proved againſt them (beſides the preferring of the bills) ſuch combinations and contemptuous ſpeeches and behaviours, as there will be good ground to call them, and perhaps ſome of their petty counſellors at law, into the ſtar-chamber.

In all this which I have ſaid your Majeſty may be pleaſed to obſerve, that I do not engage you much in the main point of the juriſdiction, for which I have a great deal of reaſon, which I now forbear. But two things I wiſh to be done: the one, that your Majeſty take this occaſion to redouble unto all your judges your ancient and true charge and rule, That you will endure no innovating the point of juriſdiction, but will have every court impaled within their own precedents, and not aſſume to themſelves new powers upon conceits and inventions of law: the other, that in theſe high cauſes that touch upon ſtate and monarchy, your Majeſty give them ſtreight charge, that upon any occaſions intervenient hereafter, they do not make the vulgar party to their conteſtations, by publick handling them, before they have conſulted with your Majeſty, to whom the reglement of thoſe things only appertaineth.

To conclude, I am not without hope, that your Majeſty managing this buſineſs according to your great wiſdom (unto which I acknowledge myſelf not to be worthy to be card-holder, or a candle-holder) will make profit of this accident as a thing of God's ſending.

Laſtly, I may not forget to repreſent to your Majeſty, that there is no thinking of arraignments until theſe things be ſomewhat accommodated, and ſome outward and ſuperficial reconciliation at leaſt made between my lord chancellor and my lord chief juſtice; for this accident is a banquet to all the delinquents friends. But this is a thing that falleth out naturally of itſelf, in reſpect of the judges going circuit, and my lord chancellor's infirmity with hope of recovery: and although this protraction of time may breed ſome doubt of mutability, yet I have lately learned out of an excellent letter of a certain king, that the ſun ſheweth ſometimes watry to our eyes, but when the cloud is gone, the ſun is as before. God ever preſerve your Majeſty.

Your Majeſty's moſt humble ſubject and bounden ſervant,

Feb. 21. 1615. FR. BACON.

CXXIX. To the KING, on the breach of the new company.

It may pleaſe your moſt excellent Majeſty,

YOUR privy council have wiſely and truly diſcerned of the orders and demands of the new company, that they are unlawful and unjuſt; and themſelves have now acknowledged the work impoſſible without them, by their petition in writing now regiſter'd in the council-book; ſo as this concluſion (of their own making) is become peremptory and final to themſelves; and the impoſſibility confeſſed, the practice and abuſe reſerved to the judgment the ſtate ſhall make of it.

This breach then of this great contract is wholly on their part, which could not have been if your Majeſty had broken upon the patent; for the patent was your Majeſty's act, the orders are their act; and in the former caſe they had not been liable to farther queſtion, now they are.

There reſt two things to be conſidered: the one, if they (like Proteus when he is hard held) ſhall yet again vary their ſhape; and ſhall quit their orders convinced of injuſtice, and lay their impoſition only upon the trade of whites, whether your Majeſty ſhall farther expect: the other, if your Majeſty diſſolve them upon this breach on their part, what is farther to be done for the ſetting of the trade again in joint, and for your own honour and profit: in both which points I will not preſume to give opinion, but only to break the buſineſs for your Majeſty's better judgment.

For the firſt, I am ſorry the occaſion was given (by my lord Coke's ſpeech at this time of the commitment of ſome of them) that they ſhould ſeek *omnem movere lapidem* to help themſelves. Better it had been, if (as my lord Fenton ſaid to me that morning very judiciouſly and with a great deal of foreſight) that for that time they ſhould have had a bridge made for them to be gone. But my lord Coke floweth according to his own tides, and not according to the tides of buſineſs. The thing which my lord Coke ſaid was good and too little, but at this time it was too much; but that is paſt. Howſoever, if they ſhould go back and ſeek again to entertain your Majeſty with new orders or offers (as is ſaid to be intended) your Majeſty hath ready two anſwers of repulſe, if it pleaſe your Majeſty to uſe them.

The one, that this is now the fourth time that they have mainly broken with your Majeſty, and contradicted themſelves. Firſt, they undertook to dye and dreſs all the cloths of the realm; ſoon after, they wound themſelves into the trade of whites, and came down to the proportion contracted. Secondly, they ought to have performed that contract according to their ſubſcription *pro rata*, without any of theſe orders and impoſitions; ſoon after, they deſerted their ſubſcription, and had recourſe to theſe devices of orders. Thirdly, if by order, and not by ſubſcription, yet their orders ſhould have laid it upon the whites, which is an unlawful and prohibited trade; nevertheleſs they would have brought in lawful and ſettled trades, full manufactures, merchandize of all natures, poll-money or brotherhood-money, and I cannot tell what. And now laſtly, it ſeemeth, they would go back to lay it upon the whites; and therefore whether your Majeſty will any more reſt and build this great wheel of your kingdom upon theſe broken and brittle pins, and try experiments farther upon the health and body of your ſtate, I leave to your princely judgment.

The other anſwer of repulſe is a kind of appoſing them what they will do after the three years contracted for; which is a point hitherto not much ſtirred, though Sir Lionel Cranfield hath ever beaten upon it in his ſpeech with me; for after the three years they are not tied otherways than as trade ſhall give encouragement, of which encouragement your Majeſty hath a bitter taſte: and if they ſhould hold on according to the third year's proportion, and not riſe on by farther gradation, your Majeſty hath not your end. No, I fear, and have long feared, that this feeding of the foreigner may be dangerous; for as we may think to hold up our cloathing by vent of whites, till we can dye and dreſs; ſo they (I mean the Dutch) will think to hold up their manufac-

ture of dying and dreſſing upon our whites, till they can clothe: ſo as your Majeſty hath the greateſt reaſon in the world to make the new company to come in and ſtrengthen that part of their contract; and, they refuſing (as it is confidently believed they will) to make their default more viſible to all men.

For the ſecond main part of your Majeſty's conſultation, that is, what ſhall be done ſuppoſing an abſolute breach, I have had ſome ſpeech with Mr. Secretary Lake, and likewiſe with Sir Lionel Cranfield; and (as I conceive) there may be three ways taken into conſideration: the firſt is, that the old company be reſtored, who (no doubt) are in appetite and (as I find by Sir Lionel Cranfield) not unprepared; and that the licences, the one, that of 30000 cloths, which was the old licence; the other that of my lord of Cumberland's, which is without ſtint (my lord of Cumberland receiving ſatisfaction) be compounded into one entire licence without ſtint; and then, that they amongſt themſelves take order for that profit which hath been offered to your Majeſty. This is a plain and known way, wherein your Majeſty is not an actor; only it hath this, that the work of dying and dreſſing cloths, which hath been ſo much glorified, ſeemeth to be wholly relinquiſhed, if you leave there. The ſecond is, that there be a free trade of cloth, with this difference, that the dyed and dreſſed pay no cuſtom, and the whites double cuſtom, it being a merchandize prohibited and only licentiate. This continueth in life and fame the work deſired, and will have a popular applauſe: but I do confeſs, I did ever think that trading in companies is moſt agreeable to the Engliſh nature, which wanteth that ſame general vein of a republick which runneth in the Dutch, and ſerveth to them inſtead of a company; and therefore I dare not adviſe to adventure this great trade of the kingdom (which hath been ſo long under government) in a free or looſe trade. The third is a compounded way of both, which is, to go on with the trade of whites by the old company reſtored; and that your Majeſty's profit be raiſed by order amongſt themſelves, rather than by double cuſtom, wherein you muſt be the actor; and that nevertheleſs there be added a privilege to the ſame company to carry out cloths dyed, and dreſſed, cuſtom-free; which will ſtill continue as a glorious beam of your Majeſty's royal deſign. I hope and wiſh at leaſt, that this which I have written may be of ſome uſe to your Majeſty, to ſettle, by the advice of the lords about you, this great buſineſs: at the leaſt, it is the effect of my care and poor ability, which, if in me be any, it is given me to no other end but faithfully to ſerve your Majeſty. God ever preſerve you.

Your Majeſty's moſt humble ſubject, and bounden ſervant,

Feb. 25. 1615. FR. BACON.

CXXX. To Sir GEORGE VILLIERS.

SIR,

I Humbly pray you not to think me over-haſty or much in appetite, if I put you in remembrance of my motion of ſtrengthening me with the oath and truſt of a privy counſellor; not for mine own ſtrength (for as to that, I thank God, I am armed within) but for the ſtrength of my ſervice. The times I ſubmit to you, who knoweth them beſt. But ſure I am, there were never times which did more require a king's attorney to be well armed, and (as I ſaid once to you) to wear a gauntlet and not a glove: the arraignments, when they proceed; the contention between the chancery and king's bench; the great cauſe of the *rege inconſulto*, which is ſo precious to the king's prerogative; divers other ſervices that concern the king's revenue and the repair of his eſtate. Beſides, it pleaſeth his majeſty to accept well of my relations touching his buſineſs, which may ſeem a kind of interloping (as the merchants call it) for one that is no counſellor. But I leave all unto you, thinking myſelf infinitely bounden unto you for your great favours, the beams whereof I ſee plainly reflect upon me even from others; ſo that now I have no greater

ambition

ambition than this, that as the king ſheweth himſelf to you the beſt maſter, ſo I might be found your beſt ſervant. In which wiſh and vow I ſhall ever reſt,

Moſt devoted and affectionate to obey your commands,

Feb. 27. 1615. FR. BACON.

CXXXI. To his MAJESTY, about the earl of Somerſet.

It may pleaſe your moſt excellent Majeſty,

AT my laſt acceſs to your Majeſty, it was fit for me to conſider the time and your journey, which maketh me now trouble your Majeſty with a remnant of that I thought then to have ſaid: beſides your old warrant and commiſſion to me, to advertiſe your Majeſty when you are *aux champs*, of any thing that concerned your ſervice and my place. I know your Majeſty is *nunquam minus ſolus, quam cum ſolus*; and I confeſs, in regard of your great judgment (unto which nothing ought to be preſented but well weighed) I could almoſt wiſh that the manner of Tiberius were in uſe again, of whom Tacitus ſaith, *Mos erat quamvis praeſentem ſcripto adire*; much more in abſence. I ſaid to your Majeſty that which I do now repeat, that the evidence upon which my lord of Somerſet ſtandeth indicted is of a good ſtrong thread, conſidering impoiſoning is the darkeſt of offences; but that the thread muſt be well ſpun and woven together: for, your Majeſty knoweth, it is one thing to deal with a jury of Middleſex and Londoners, and another to deal with the peers; whoſe objects perhaps will not be ſo much what is before them in the preſent caſe (which I think is as odious to them as to the vulgar) but what may be hereafter. Beſides, there be two diſadvantages, we that ſhall give in evidence ſhall meet with, ſomewhat conſiderable; the one, that the ſame things often opened loſe their freſhneſs, except there be an aſperſion of ſomewhat that is new; the other is the expectation raiſed, which makes things ſeem leſs than they are, becauſe they are leſs than opinion. Therefore I were not your attorney, nor myſelf, if I ſhould not be very careful, that in this laſt part, which is the pinacle of your former juſtice, all things may paſs *ſine offendiculo, ſine ſcrupulo.* Hereupon I did move two things, which (having now more fully explained myſelf) I do in all humbleneſs renew. Firſt, that your Majeſty will be careful to chuſe a ſteward of judgment, that may be able to moderate the evidence and cut off digreſſions; for I may interrupt, but I cannot ſilence: the other, that there may be ſpecial care taken for the ordering the evidence, not only for the knitting, but for the liſt, and (to uſe your Majeſty's own words) the confining of it. This to do, if your Majeſty vouchſafe to direct it yourſelf, that is the beſt; if not, I humbly pray you to require my lord chancellor, that he, together with my lord chief juſtice, will confer with myſelf and my fellows, that ſhall be uſed for the marſhalling and bounding of the evidence, that we may have the help of his opinion, as well as that of my lord chief juſtice; whoſe great travels as I much commend, yet that ſame *plerophoria*, or over-confidence, doth always ſubject things to a great deal of chance.

There is another buſineſs proper for me to crave of your Majeſty at this time (as one that have in my eye a great deal of ſervice to be done) concerning your caſual revenue; but conſidering times and perſons, I deſire to be ſtrengthened by ſome ſuch form of commandment under your royal hand, as I ſend you here incloſed. I moſt humbly pray your Majeſty to think, I underſtand myſelf right well in this which I deſire, and that it tendeth greatly to the good of your ſervice. The warrant I mean not to impart, but upon juſt occaſion; thus thirſty to hear of your Majeſty's good health, I reſt.

22. Jan. 1615.

CXXXII. To his MAJESTY, about the chancellor's place.

It may pleaſe your moſt excellent Majeſty,

THE laſt day, when it pleaſed your Majeſty to expreſs yourſelf towards me far above that I can deſerve or could expect, I was ſurprized by the prince's coming in: I moſt humbly pray your Majeſty, therefore, to accept theſe few lines of acknowledgment. I never had greater thoughts for myſelf, farther than to maintain thoſe great thoughts which, I confeſs, I have for your ſervice. I know what honour is, and I know what the times are; but, I thank God, with me my ſervice is the principal; and it is far from me, under honourable pretences to cover baſe deſires; which I account them to be, when men refer too much to themſelves, eſpecially ſerving ſuch a king. I am afraid of nothing but that the maſter of the horſe, your excellent ſervant, and I ſhall fall out, who ſhall hold your ſtirrup beſt. But were your Majeſty mounted and ſeated without difficulties and diſtaſtes in your buſineſs, as I deſire and hope to ſee you; I ſhould *ex animo* deſire to ſpend the decline of my years in my ſtudies: wherein alſo I ſhould not forget to do him honour, who, beſides his active and politick virtues, is the beſt pen of kings, much more the beſt ſubject of a pen. God ever preſerve your Majeſty.

Your Majeſty's moſt humble ſubject, and more and more obliged ſervant,

April 1. 1616. FR. BACON.

CXXXIII. To Sir GEORGE VILLIERS, about the earl of Somerſet.

SIR,

I Thought it convenient to give his majeſty an account of that which his majeſty gave me in charge in general, reſerving the particulars for his coming; and I find it neceſſary to know his pleaſure in ſome things ere I could farther proceed.

My lord chancellor and myſelf ſpent Thurſday and yeſterday, the whole forenoons of both days, in the examination of Sir Robert Cotton; whom we find hitherto but empty, ſave only in the great point of the treaty with Spain.

This examination was taken before his majeſty's warrant came to Mr. Vice-Chamberlain, for communicating unto us the ſecrets of the penſions; which warrant I received yeſterday morning being Friday, and a meeting was appointed at my lord chancellor's in the evening after council; upon which conference we find matter of farther examination for Sir Robert Cotton, of ſome new articles whereupon to examine Somerſet, and of entering into examination of Sir William Mounſon.

Wherefore, firſt for Somerſet, being now ready to proceed to examine him, we ſtay only upon the duke of Lenox, who it ſeemeth is fallen ſick and keepeth in; without whom, we neither think it warranted by his majeſty's direction, nor agreeable to his intention, that we ſhould proceed; for that will want, which ſhould ſweeten the cup of medicine, he being his countryman and friend. Herein then we humbly crave his majeſty's direction with all convenient ſpeed, whether we ſhall expect the duke's recovery, or proceed by ourſelves; or that his majeſty will think of ſome other perſon (qualified according to his majeſty's juſt intention) to be joined with us. I remember we had ſpeech with his majeſty of my lord Hay; and I, for my part, can think of no other, except it ſhould be my lord chancellor of Scotland, for my lord Binning may be thought too near allied.

I am farther to know his majeſty's pleaſure concerning the day; for my lord chancellor and I conceived his majeſty to have deſigned the Monday and Tueſday after St. George's feaſt; and nevertheleſs we conceived alſo, that his majeſty underſtood that the examinations of Somerſet about this, and otherwiſe touching the Spaniſh practices, ſhould firſt be put to a point; which will not be poſ-

ſible, as time cometh on, by reaſon of this accident of the duke's ſickneſs, and the cauſe we find of Sir William Mounſon's examination, and that divers of the peers are to be ſent for from remote places.

It may pleaſe his majeſty therefore to take into conſideration, whether the days may not well be put off till Wedneſday and Thurſday after the term, which endeth on the Monday, being the Wedneſday and Thurſday before Whitſuntide; or, if that pleaſe not his majeſty (in reſpect, it may be, his majeſty will be then in town, whereas theſe arraignments have been ſtill in his majeſty's abſence from town) then to take Monday and Tueſday after Trinity Sunday, being the Monday and Tueſday before Trinity term.

Now for Sir William Mounſon, if it be his majeſty's pleaſure that my lord chancellor and I ſhall proceed to the examination of him (for that of the duke of Lenox differs, in that there is not the like cauſe as in that of Somerſet) then his majeſty may be pleaſed to direct his commandment and warrant to my lord chief juſtice, to deliver unto me the examination he took of Sir William Mounſon, that thoſe, joined to the information which we have received from Mr. Vice Chamberlain, may be full inſtructions unto us for his examination. Farther, I pray let his majeſty know, that on Thurſday in the evening my lord chief juſtice and myſelf attended my lord chancellor at his houſe for the ſettling that ſcruple which his Majeſty moſt juſtly conceived in the examination of the lady Somerſet; at which time, reſting on his majeſty's opinion, that that evidence, as it ſtandeth now uncleared, muſt, *ſecundum leges ſanæ conſcientiae*, be laid aſide; the queſtion was, whether we ſhould leave it out, or try what a re-examination of my lady Somerſet would produce? Whereupon we agreed upon a re-examination of my lady Somerſet, which my lord chief juſtice and I have appointed for Monday morning. I was bold at that meeting to put my lord chief juſtice a poſing queſtion; which was, Whether that opinion which his brethren had given upon the whole evidence, and he had reported to his majeſty, *viz.* that it was good evidence, in their opinions, to convict my lord of Somerſet, was not grounded upon this part of the evidence now to be omitted, as well as upon the reſt: who anſwered poſitively, No; and they never ſaw the expoſition of the letter, but the letter only.

The ſame Thurſday evening, before we entered into this laſt matter, and in the preſence of Mr. Secretary Winwood (who left us when we went to the former buſineſs) we had conference concerning the frauds, and abuſive grants paſſed to the prejudice of his majeſty's ſtate of revenue; where my lord chief juſtice made ſome relation of his collections which he had made of that kind; of which I will only ſay this, that I heard nothing that was new to me, and I found my lord chancellor in divers particulars, more ready than I found him. We grew to a diſtribution both of times and of matters, for we agreed what to begin with preſently, and what ſhould follow, and alſo we had conſideration what was to be holpen by law, what by equity, and what by parliament; wherein I muſt confeſs, that in the laſt of theſe (of which my lord chief juſtice made moſt account) I make moſt doubt. But the concluſion was, that upon this entrance I ſhould adviſe and confer at large with my lord chief juſtice, and ſet things in work. The particulars I refer till his majeſty's coming.

The learned counſel have now attended me twice at my chamber, to confer upon that which his majeſty gave us in commandment, for our opinion upon the caſe ſet down by my lord chancellor, whether the ſtatutes extend to it or no; wherein we are more and more edified and confirmed that they do not, and ſhall ſhortly ſend our report to his majeſty.

Sir, I hope you will bear me witneſs I have not been idle; but all is nothing to the duty I owe his majeſty, for his ſingular favours paſt and preſent; ſupplying all with love and prayers, I reſt,

Your true friend and devoted ſervant,

April 13. 1616. FR. BACON.

CXXXIV.

CXXXIV. To Sir GEORGE VILLIERS, about the earl of Somerſet.

SIR,

I Received from you a letter of very brief and clear directions; and I think it a great bleſſing of God upon me and my labours, that my directions come by ſo clear a conduit, as they receive no tincture in the paſſage.

Yeſterday my lord chancellor, the duke of Lenox, and myſelf, ſpent the whole afternoon at the Tower, in the examination of Somerſet, upon the articles ſent from his majeſty, and ſome other additionals, which were in effect contained in the former, but extended to more particularity, by occaſion of ſomewhat diſcovered by Cotton's examination, and Mr. Vice-Chamberlain's information.

He is full of proteſtations, and would fain keep that quarter toward Spain clear; uſing but this for argument, that he had ſuch fortunes from his majeſty, as he could not think of bettering his conditions from Spain, becauſe (as he ſaid) he was no military man. He cometh nothing ſo far on (for that which concerneth the treaty) as Cotton, which doth much aggravate ſuſpicion againſt him: the farther particulars I reſerve to his majeſty's coming.

In the end, *tanquam obiter*, but very effectually, my lord chancellor put him in mind of the ſtate he ſtood in for the impoiſonment; but he was little moved with it, and pretended careleſſneſs of life, ſince ignominy had made him unfit for his majeſty's ſervice. I am of opinion that the fair uſage of him, as it was fit for the Spaniſh examinations, and for the queſtions touching the papers and diſpatches, and all that, ſo it was no good preparative to make him deſcend into himſelf touching his preſent danger: and therefore my lord chancellor and myſelf thought not good to inſiſt upon it at this time.

I have received from my lord chief juſtice the examination of Sir William Mounſon; with whom we mean to proceed to farther examination with all ſpeed.

My lord chief juſtice is altered touching the re-examination of the lady, and deſired me that we might ſtay till he ſpake with his majeſty, ſaying, it could be no caſting back to the buſineſs; which I did approve.

Myſelf, with the reſt of my fellows, upon due and mature advice, perfected our report touching the chancery; for the receiving whereof, I pray you put his majeſty in mind at his coming, to appoint ſome time for us to wait upon him all together, for the delivery in of the ſame, as we did in our former certificate.

For the revenue matters, I reſerve them to his majeſty's coming; and in the mean time I doubt not but Mr. Secretary Winwood will make ſome kind of report thereof to his majeſty.

For the concluſion of your letter concerning my own comfort, I can but ſay the Pſalm of *Quid retribuam?* God that giveth me favour in his majeſty's eyes, will ſtrengthen me in his majeſty's ſervice. I ever reſt

Your true and devoted ſervant,

April 18. 1616. FR. BACON.

To requite your poſtſcript of excuſe for ſcribbling, I pray you excuſe that the paper is not gilt, I writing from Weſtminſter-Hall, where we are not ſo fine.

CXXXV. A Letter to the KING, with his MAJESTY's obſervations upon it.

It may pleaſe your moſt excellent Majeſty,

YOUR Majeſty hath put me upon a work of providence in this great cauſe, which is to break and diſtinguiſh future events into preſent caſes; and ſo to preſent them to your royal judgment, that in this action, which hath been carried

with ſo great prudence, juſtice, and clemency, there may be (for that which remaineth) as little ſurprize as is poſſible; but that things duly foreſeen may have their remedies and directions in readineſs; wherein I cannot forget what the poet Martial ſaith; *O quantum eſt ſubitis caſibus ingenium!* ſignifying, that accident is many times more ſubtle than foreſight, and over-reacheth expectation; and beſides, I know very well the meanneſs of my own judgment, in comprehending or forecaſting what may follow.

It was your Majeſty's pleaſure alſo, that I ſhould couple the ſuppoſitions with my opinion in every of them, which is a harder taſk; but yet your Majeſty's commandment requireth my obedience, and your truſt giveth me aſſurance.

I will put the caſe, which I wiſh; that Somerſet ſhould make a clear confeſſion of his offences, before he be produced to tryal.

REX. I ſay with Apollo, *Medio tutius itur*, if it may ſtand with law; and if it cannot, when I ſhall hear that he confeſſeth, I am then to make choice of the firſt or the laſt.

In this caſe it ſeemeth your Majeſty will have a new conſult; the points whereof will be, 1. Whether your Majeſty will ſtay the tryal, and ſo ſave them both from the ſtage, and that publick ignominy. 2. Or whether you will (or may fitly by law) have the tryal proceed, and ſtay or reprieve the judgment, which ſaveth the lands from forfeiture, and the blood from corruption. 3. Or whether you will have both tryal and judgment proceed, and ſave the blood only, not from corrupting, but from ſpilling.

Theſe be the depths of your Majeſty's mercy which I may not enter into: but for honour and reputation they have theſe grounds:

That the blood of Overbury is already revenged by divers executions.

That confeſſion and penitency are the footſtools of mercy; adding this circumſtance likewiſe, that the former offenders did none of them make a clear confeſſion.

That the great downfal of ſo great perſons carrieth in itſelf a heavy judgment, and a kind of civil death, although their lives ſhould not be taken.

All which may ſatisfy honour for ſparing their lives. But if your Majeſty's mercy ſhould extend to the firſt degree, which is the higheſt, of ſparing the ſtage and the tryal; then three things are to be conſidered:

REX. This article cannot be mended in point thereof.

Firſt, That they make ſuch a ſubmiſſion or deprecation, as they proſtrate themſelves, and all that they have, at your Majeſty's feet, imploring your mercy.

Secondly, That your Majeſty, in your own wiſdom, do adviſe what courſe you will take, for the utter extinguiſhing of all hopes of reſuſcitating of their fortunes and favour; whereof if there ſhould be the leaſt conceit, it will leave in men a great deal of envy and diſcontent.

And laſtly; whether your Majeſty will not ſuffer it to be thought abroad, that there is cauſe of farther examination of Somerſet, concerning matters of eſtate, after he ſhall begin once to be a confeſſant, and ſo make as well a politick ground, as a ground of clemency, for farther ſtay.

And for the ſecond degree, of proceeding to tryal, and ſtaying judgment, I muſt better inform myſelf by precedents, and adviſe with my lord chancellor.

REX. If ſtay of judgment can ſtand with the law, I could even wiſh it in this caſe: in all the reſt this article cannot be mended.

The ſecond caſe is, if that fall out which is likeſt (as things ſtand, and which we expect) which is, that the lady confeſs; and that Somerſet himſelf plead not guilty, and be found guilty:

In this caſe, firſt, I ſuppoſe your Majeſty will not think of any ſtay of judgment, but that the publick proceſs of juſtice paſs on.

Secondly, For your mercy to be extended to both for pardon of their execution, I have partly touched in the conſiderations applied to the former caſe; whereunto may be added, that as there is ground of mercy for her, upon her penitency and free confeſſion, and will be much more upon his finding guilty; becauſe the malice on his part will be thought the deeper ſource of the offence: ſo there will be ground for mercy on his part, upon the nature of the proof; and becauſe it reſts chiefly upon preſumptions. For certainly there may be an evidence ſo balanced, as it may have ſufficient matter for the conſcience of the peers to convict him, and yet leave ſufficient matter in the conſcience of a king upon the ſame evidence to pardon his life; becauſe the peers are aſtringed by neceſſity either to acquit or condemn; but grace is free: and for my part, I think the evidence in this preſent caſe will be of ſuch a nature.

Thirdly, It ſhall be my care ſo to moderate the manner of charging him, as it might make him not odious beyond the extent of mercy.

REX. That danger is well to be foreſeen, leſt he upon the one part commit unpardonable errors, and I on the other part ſeem to puniſh him in the ſpirit of revenge.

Laſtly, All theſe points of mercy and favour, are to be underſtood with this limitation, if he do not, by his contemptuous and inſolent carriage at the bar, make himſelf incapable and unworthy of them.

The third caſe is, if he ſhould ſtand mute and will not plead, whereof, your Majeſty knoweth, there hath been ſome ſecret queſtion.

In this caſe I ſhould think fit, that, as in publick, both myſelf, and chiefly my lord chancellor (ſitting then as lord Steward of England) ſhould dehort and deter him from that deſperation; ſo nevertheleſs, that as much ſhould be done for him, as was done for Weſton; which was to adjourn the court for ſome days, upon a chriſtian ground, that he may have time to turn from that mind of deſtroying himſelf; during which time your Majeſty's farther pleaſure may be known.

REX. This article cannot be mended.

The fourth caſe is that which I ſhould be very ſorry it ſhould happen, but it is a future contingent; that is, if the peers ſhould acquit him and find him not guilty.

In this caſe the lord ſteward muſt be provided what to do. For as it hath been never ſeen (as I conceive it) that there ſhould be any rejecting of the verdict, or any reſpiting of the judgment of the acquittal; ſo on the other ſide this caſe requireth, that becauſe there be many high and heinous offences (though not capital) for which he may be queſtioned in the ſtar-chamber, or otherwiſe, that there be ſome touch of that in general at the concluſion, by my lord ſteward of England; and that therefore he be remanded to the Tower, as cloſe priſoner.

REX. This is ſo alſo.

For matter of examination, or other proceedings, my lord chancellor with my advice hath ſet down,

To-morrow, being Monday, for the re-examination of the lady:

Wedneſday next, for the meeting of the judges concerning the evidence:

Thurſday, for the examination of Somerſet himſelf, according to your Majeſty's inſtructions:

Which three parts, when they ſhall be performed, I will give your Majeſty advertiſement with ſpeed, and in the mean time be glad to receive from your Majeſty (whom it is my part to inform truly) ſuch directions or ſignifications of your pleaſure as this advertiſement may induce, and that with ſpeed, becauſe the time cometh on. Well remembring who is the perſon whom your Majeſty admitted to this ſecret, I have ſent this letter open unto him, that he may

take your Majeſty's times to report it, or ſhew it unto you; aſſuring myſelf that nothing is more firm than his truſt, tyed to your Majeſty's commandments.

Your Majeſty's moſt humble and moſt bounden ſubject and ſervant,

April 28. 1616. FR. BACON.

CXXXVI. To Sir GEORGE VILLIERS, about the earl of Somerſet.

SIR,

I Have received my letter from his majeſty with his marginal notes, which ſhall be my directions, being glad to perceive I underſtand his majeſty ſo well. That ſame little charm, which may be ſecretly infuſed into Somerſet's ear ſome few hours before his trial, was excellently well thought of by his majeſty; and I do approve it both for matter and time; only, if it ſeem good to his majeſty, I would wiſh it a little enlarged: for if it be no more than to ſpare his blood, he hath a kind of proud humour which may overwork the medicine. Therefore I could wiſh it were made a little ſtronger, by giving him ſome hopes that his majeſty will be good to his lady and child; and that time (when juſtice and his majeſty's honour is once ſaved and ſatisfied) may produce farther fruit of his majeſty's compaſſion: which was to be ſeen in the example of Southampton, whom his majeſty after attainder reſtored; and Cobham and Gray, to whom his majeſty, notwithſtanding they were offenders againſt his own perſon, yet he ſpared their lives; and for Gray, his majeſty gave him back ſome part of his eſtate, and was upon point to deliver him much more. He having been ſo highly in his majeſty's favour, may hope well, if he hurt not himſelf by his publick miſdemeanour.

For the perſon that ſhould deliver this meſſage, I am not ſo well ſeen in the region of his friends, as to be able to make choice of a particular; my lord treaſurer, the lord Knollys, or any of his neareſt friends, ſhould not be truſted with it; for they may go too far, and perhaps work contrary to his majeſty's ends. Thoſe which occur to me, are my lord Hay, my lord Burleigh (of England I mean) and Sir Robert Carre.

My lady Somerſet hath been re-examined, and his majeſty is found both a true prophet and a moſt juſt king in that ſcruple he made; for now ſhe expoundeth the word He, that ſhould ſend the tarts to Elwys's wife, to be of Overbury, and not of Somerſet; but for the perſon that ſhould bid her, ſhe ſaith it was Northampton or Weſton, not pitching upon certainty, which giveth ſome advantage to the evidence.

Yeſterday being Wedneſday, I ſpent four or five hours with the judges, whom his majeſty deſigned to take conſideration with, the four judges of the king's bench, of the evidence againſt Somerſet: they all concur in opinion, that the queſtioning and drawing him on to trial is moſt honourable and juſt, and that the evidence is fair and good.

His majeſty's letter to the judges concerning the *Commendams* was full of magnanimity and wiſdom. I perceive his majeſty is never leſs alone, than when he is alone; for I am ſure there was no body by him to inform him, which made me admire it the more.

The judges have given a day over, till the ſecond Saturday of the next term; ſo as that matter may endure farther conſideration, for his majeſty not only not to loſe ground, but to win ground.

To-morrow is appointed for the examination of Somerſet, which by ſome infirmity of the duke of Lenox was put off from this day. When this is done, I will write more fully, ever reſting,

Your true and devoted ſervant,

May 2. 1616. FR. BACON.

CXXXVII. To Sir GEORGE VILLIERS, of Somerſet's arraignment.

SIR,

I Am far enough from opinion, that the redintegration or reſuſcitation of Somerſet's fortune can ever ſtand with his majeſty's honour and ſafety; and therein I think I expreſs'd myſelf fully to his majeſty in one of my former letters; and I know well any expectation or thought abroad will do much hurt. But yet the glimmering of that which the king hath done to others, by way of talk to him, cannot hurt, as I conceive; but I would not have that part of the meſſage as from the king, but added by the meſſenger as from himſelf. This I remit to his majeſty's princely judgment.

For the perſon, tho' he truſt the lieutenant well, yet it muſt be ſome new man; for in theſe caſes, that which is ordinary worketh not ſo great impreſſions as that which is new and extraordinary.

The time I wiſh to be the Tueſday, being the even of his lady's arraignment: For, as his majeſty firſt conceived, I would not have it ſtay in his ſtomach too long, leſt it ſour in the digeſtion; and to be too near the time, may be thought but to tune him for that day.

I ſend herewithal the ſubſtance of that which I purpoſe to ſay nakedly, and only in that part which is of tenderneſs; for that I conceive was his majeſty's meaning.

It will be neceſſary, becauſe I have diſtributed parts to the two ſerjeants (as that paper doth expreſs) and they underſtand nothing of his majeſty's pleaſure of the manner of carrying the evidence more than they may gueſs by obſervation of my example (which they may aſcribe as much to my nature as to direction;) therefore that his majeſty would be pleaſed to write ſome few words to us all, ſigned with his own hand, that, the matter itſelf being tragical enough, bitterneſs and inſulting be forborn; and that we remember our part to be to make him delinquent to the peers, and not odious to the people. That part of the evidence of the lady's expoſition of the pronoun (he) which was firſt caught hold of by me, and afterwards by his majeſty's ſingular wiſdom and conſcience excepted to, and now is by her re-examination retracted, I have given order to ſergeant Montague (within whoſe part it falleth) to leave it out of the evidence. I do yet crave pardon, if I do not certify touching the point of law for reſpiting the judgment, for I have not fully adviſed with my lord chancellor concerning it, but I will advertiſe it in time.

I ſend his majeſty the lord ſteward's commiſſion in two ſeveral inſtruments, the one to remain with my lord chancellor, which is that which is written in ſecretary-hand for his warrant, and is to paſs the ſignet; the other, that whereunto the great ſeal is to be affixed, which is in chancery-hand: his majeſty is to ſign them both, and to tranſmit the former to the ſignet, if the ſecretaries either of them be there; and both of them are to be returned to me with all ſpeed. I ever reſt,

Your true and devoted ſervant,

May 5, 1616. FR. BACON.

CXXXVIII. To the KING, about Somerſet's examination.

It may pleaſe your Majeſty,

WE have done our beſt endeavours to perform your Majeſty's commiſſion, both in matter and manner, for the examination of my lord of Somerſet; wherein that which paſſed, for the general, was to this effect; That he was to know his own caſe, for that his day of trial could not be far off; but that this day's work was that which would conduce to your Majeſty's juſtice little or nothing, but to your mercy much, if he did lay hold upon it; and therefore might do him good, but could do him no hurt. For as for

your juſtice, there had been taken great and grave opinion, not only of ſuch judges as he may think violent, but of the moſt ſad and moſt temperate of the kingdom, who ought to underſtand the ſtate of the proofs, that the evidence was full to convict him, ſo as there needeth neither confeſſion, nor ſupply of examination. But for your Majeſty's mercy (although he were not to expect we ſhould make any promiſe) we did aſſure him, that your Majeſty was compaſſionate of him if he gave you ſome ground whereon to work; that as long as he ſtood upon his innocency and trial, your Majeſty was tied in honour to proceed according to juſtice; and that he little underſtood, being a cloſe priſoner, how much the expectation of the world, beſides your love to juſtice itſelf, engaged your Majeſty, whatſoever your inclinations were: but nevertheleſs that a frank and clear confeſſion might open the gate of mercy, and help to ſatisfy the point of honour.

That his lady (as he knew, and that after many oaths and imprecations to the contrary) had nevertheleſs in the end, been touched with remorſe, confeſſed; that ſhe that led him to offend, might lead him likewiſe to repent of his offence: that the confeſſion of one of them could not fitly do either of them much good, but the confeſſion of both of them might work ſome farther effect towards both: and therefore, in concluſion, we wiſhed him not to ſhut the gate of your Majeſty's mercy againſt himſelf, by being obdurate any longer. This was the effect of that which was ſpoken, part by one of us, part by another, as it fell out; adding farther, that he might well diſcern who ſpake in us in the courſe we held; for that commiſſioners for examination might not preſume ſo far of themſelves.

Not to trouble your Majeſty with circumſtances of his anſwers, the ſequel was no other, but that we found him ſtill not to come any degree farther on to confeſs; only his behaviour was very ſober, and modeſt, and mild (differing apparently from other times) but yet, as it ſeemed, reſolved to have his trial.

Then did we proceed to examine him upon divers queſtions touching the empoiſonment, which indeed were very material and ſupplemental to the former evidence; wherein either his affirmatives gave ſome light, or his negatives do greatly falſify him in that which is apparently proved.

We made this farther obſervation; that when we aſked him ſome queſtion that did touch the prince or ſome foreign practice (which we did very ſparingly at this time) yet he grew a little ſtirred, but in the queſtions of the empoiſonment very cold and modeſt. Thus not thinking it neceſſary to trouble your Majeſty with any farther particulars, we end with prayer to God ever to preſerve your Majeſty.

Your Majeſty's moſt loyal and faithful ſervant,

FR. BACON.

Poſtſcript. If it ſeem good unto your Majeſty, we think it not amiſs ſome preacher (well choſen) had acceſs to my lord of Somerſet for his preparing and comfort, although it be before his trial.

CXXXIX. An expoſtulation to the lord chief juſtice COKE.

My very good Lord,

Eccleſ. xi. 4. THOUGH it be true, that *who conſidereth the wind and the rain, ſhall neither ſow nor reap*; yet *there is a ſeaſon for every action*, and ſo *there is a time to ſpeak, and a time to keep ſilence.* There is a time when the words of a poor ſimple man may profit; and that poor man in *The Preacher*, which delivered the city by his wiſdom, found that without this opportunity the owner both of wiſdom and eloquence loſe but their labour, and cannot charm the deaf adder. God therefore, before his Son that bringeth mercy, ſent his ſervant the trumpeter of repentance to level every high hill, to prepare the way before him, making it ſmooth and ſtraight: and as it is in ſpiritual things, where Chriſt

never comes before his way-maker hath laid even the heart with ſorrow and repentance (ſince ſelf-conceited and proud perſons think themſelves too good and too wiſe to learn of their inferiors, and therefore need not the phyſician) ſo in the rules of earthly wiſdom, it is not poſſible for nature to attain any mediocrity of perfection, before ſhe be humbled by knowing herſelf and her own ignorance. Not only knowledge, but alſo every other gift (which we call the gifts of fortune) have power to puff up earth: afflictions only level theſe molehills of pride, plough the heart, and make it fit for wiſdom to ſow her ſeed, and for grace to bring forth her increaſe. Happy is that man therefore, both in regard of heavenly and earthly wiſdom, that is thus wounded to be cured, thus broken to be made ſtraight; thus made acquainted with his own imperfections that he may be perfected.

Suppoſing this to be the time of your affliction, that which I have propounded to myſelf is, by taking this ſeaſonable advantage, like a true friend (though far unworthy to be counted ſo) to ſhew you your true ſhape in a glaſs; and that not in a falſe one to flatter you, nor yet in one that ſhould make you ſeem worſe than you are, and ſo offend you; but in one made by the reflexion of your own words and actions; from whoſe light proceeds the voice of the people, which is often not unfitly called the voice of God. But therein (ſince I have purpoſed a truth) I muſt intreat liberty to be plain, a liberty that at this time I know not whether or no I may uſe ſafely, I am ſure at other times I could not; yet of this reſolve yourſelf, it proceedeth from love and a true deſire to do you good; that you knowing the general opinion, may not altogether neglect or contemn it, but mend what you find amiſs in yourſelf, and retain what your judgment ſhall approve; for to this end ſhall truth be delivered as naked as if yourſelf were to be anatomized by the hand of opinion. All men can ſee their own profit, that part of the wallet hangs before. A true friend (whoſe worthy office I would perform, ſince, I fear, both yourſelf and all great men want ſuch, being themſelves true friends to few or none) is firſt to ſhew the other, and which is from your eyes.

Firſt therefore behold your errors. In diſcourſe you delight to ſpeak too much, not to hear other men; this, ſome ſay, becomes a pleader not a judge; for by this ſometimes your affections are entangled with a love of your own arguments, though they be the weaker; and rejecting of thoſe, which, when your affections were ſettled, your own judgment would allow for ſtrongeſt. Thus while you ſpeak in your own element, the law, no man ordinarily equals you; but when you wander (as you often delight to do) you wander indeed, and give never ſuch ſatisfaction as the curious time requires. This is not cauſed by any natural defect, but firſt for want of election, when you having a large and fruitful mind, ſhould not ſo much labour what to ſpeak, as to find what to leave unſpoken: rich ſoils are often to be weeded.

Secondly, You cloy your auditory when you would be obſerved; ſpeech muſt be either ſweet or ſhort.

Thirdly, You converſe with books, not men, and books eſpecially human; and have no excellent choice with men, who are the beſt books: for a man of action and employment you ſeldom converſe with, and then but with your underlings; not freely, but as a ſchoolmaſter with his ſcholars, ever to teach, never to learn: but if ſometimes you would in your familiar diſcourſe hear others, and make election of ſuch as know what they ſpeak, you ſhould know many of theſe tales you tell to be but ordinary; and many other things, which you delight to repeat and ſerve in for novelties, to be but ſtale. As in your pleadings, you were wont to inſult over miſery, and to inveigh bitterly at the perſons (which bred you many enemies, whoſe poiſon yet ſwelleth, and the effects now appear) ſo are you ſtill wont to be a little careleſs in this point, to praiſe or diſgrace upon ſlight grounds, and that ſometimes untruly; ſo that your reproofs or commendations are for the moſt part neglected and contemned; when the cenſure of a judge (coming ſlow but ſure) ſhould be a brand to the guilty, and a crown to the virtuous. You will jeſt at any man in publick, without reſpect of the perſon's dignity or your own: this diſgraceth your gra-

vity, more than it can advance the opinion of your wit; and ſo do all actions which we ſee you do directly with a touch of vain-glory, having no reſpect to the true end. You make the law to lean too much to your opinion, whereby you ſhew yourſelf to be a legal tyrant, ſtriking with that weapon where you pleaſe, ſince you are able to turn the edge any way: for thus the wiſe maſter of the law gives warning to young ſtudents, that they ſhould be wary, leſt, while they hope to be inſtructed by your integrity and knowledge, they ſhould be deceived with your ſkill armed with authority. Your too much love of the world is too much ſeen, when having the living of † a thouſand, you relieve few or none: the hand that has taken ſo much, can it give ſo little? Herein you ſhew no bowels of compaſſion, as if you thought all too little for yourſelf; or that God hath given you all that you have (if you think wealth to be his gift, I mean that you get well, for I know ſure the reſt is not) only to that end you ſhould ſtill gather more, and never be ſatisfied; but try how much you would gather, to account for all at the great and general audit-day. We deſire you to amend this, and let your poor tenants in Norfolk find ſome comfort; where nothing of your eſtate is ſpent towards their relief, but all brought up hither, to the impoveriſhing of your country.

† 10000 l. *Cab.*

In your laſt, which might have been your beſt, piece of ſervice to the ſtate, affectioned to follow that old rule, which giveth juſtice leaden heels and iron hands, you uſed too many delays till the delinquents hands were looſed, and yours bound: in that work you ſeemed another Fabius, where the humour of Marcellus would have done better; what need you have ſought more evidences than enough? while you pretended the finding out of more (miſſing your aim) you diſcredited what you had found. This beſt judgments think; though you never uſed ſuch ſpeeches as are fathered upon you, yet you might well have done it, and but rightly; for this crime was ſecond to none, but the powder-plot; that would have blown up all at one blow, a merciful cruelty; this would have done the ſame by degrees, a lingring but a ſure way; one might by one be called out, till all oppoſers had been removed.

Beſides, that other plot was ſcandalous to Rome, making popery odious in the ſight of the whole world: this hath been ſcandalous to the truth of the whole goſpel; and ſince the firſt nullity to this inſtant, when juſtice hath her hands bound, the devil could not have invented a more miſchievous practice to our ſtate and church than this hath been, is, and is like to be. God avert the evil.

But herein you committed another fault: that as you were too open in your proceedings, and ſo taught them thereby to defend themſelves; ſo you gave them time to undermine juſtice, and to work upon all advantages both of affections, and honour, and opportunity, and breach of friendſhip; which they have ſo well followed, ſparing neither pains nor coſts, that it almoſt ſeemeth an higher offence in you to have done ſo much indeed, than that you have done no more: you ſtopt the confeſſions and accuſations of ſome, who perhaps, had they been ſuffered, would have ſpoken enough to have removed ſome ſtumbling-blocks out of your way; and that you did not this in the favour of any one, but of I know not what preſent unadviſed humours, ſuppoſing enough behind to diſcover all; which fell not out ſo. Howſoever, as the apoſtle ſaith in another caſe, you *went not rightly to the truth*; and therefore, though you were to be commended for what you did, yet you were to be reprehended for many circumſtances in the doing; and doubtleſs God hath an eye in this croſs to your negligence, and the briars are left to be pricks in your ſides and thorns in your eyes. But that which we commend you for, are thoſe excellent parts in nature, and knowledge in the law, which you are endowed withal; but theſe are only good in their good uſe. Wherefore we thank you heartily for ſtanding ſtoutly in the commonwealth's behalf; hoping it proceedeth not from a diſpoſition to oppoſe greatneſs (as your enemies ſay) but to do juſtice, and deliver truth indifferently without reſpect of perſons; and in this we pray for your proſperity, and are ſorry that your good actions ſhould not always ſucceed happily. But in the carriage of this you were faulty;

faulty; for you took it in hand in an evil time, both in reſpect of the preſent buſineſs which is interrupted, and in regard of his preſent ſickneſs whom it concerned, whereby you diſunited your ſtrength, and made a gap for the enemies to paſs out at, and to return and aſſault you.

But now ſince the caſe ſo ſtandeth, we deſire you to give way to power, and ſo to fight that you be not utterly broken, but reſerved entirely to ſerve the commonwealth again, and to do what good you can, ſince you cannot do all the good you would; and ſince you are fallen upon this rock, caſt out the goods to ſave the bottom; ſtop the leaks and make towards land; learn of the ſteward to make friends of the unrighteous mammon. Thoſe Spaniards in Mexico who were chaſed of the Indians, tell us what to do with our goods in our extremity: they being to paſs over a river in their flight, as many as caſt away their gold ſwam over ſafe; but ſome more covetous, keeping their gold, were either drowned with it, or overtaken and ſlain by the ſavages: you have received, now learn to give. The beaver learns us this leſſon, who being hunted for his ſtones, bites them off: you cannot but have much of your eſtate (pardon my plainneſs) ill got; think how much of that you never ſpake for, how much by ſpeaking unjuſtly or in unjuſt cauſes. Account it then a bleſſing of God, if thus it may be laid out for your good, and not left for your heir, to haſten the waſting of much of the reſt, perhaps of all: for ſo we ſee God oftentimes proceeds in judgment with many haſty gatherers: you have enough to ſpare, being well laid, to turn the tide, and fetch all things again. But if you eſcape (I ſuppoſe it worthy of an *If*, ſince you know the old uſe, that none called in queſtion muſt go away uncenſured) yet conſider that accuſations make wounds, and leave ſcars; and though you ſee the toil behind your back, your ſelf free, and the covert before, yet remember there are ſtands: truſt not a reconciled enemy; but think the peace is but to ſecure you for farther advantage, or expect a ſecond and a third encounter; the main battle, the wings are yet unbroken, they may charge you at an inſtant, or Death before them; walk therefore circumſpectly, and if at length, by means of our good endeavours and yours, you recover the favour that you have loſt; give God the glory in action, not in words only; and remember us with ſenſe of your paſt misfortune, whoſe eſtate hath, and may hereafter lie in the power of your breath.

There is a great mercy in diſpatch, delays are tortures, wherewith by degrees we are rent out of our eſtates[a]; do not you (if you be reſtored) as ſome others do, fly from the ſervice of virtue to ſerve the time, as if they repented their goodneſs, or meant not to make a ſecond hazard in God's houſe; but rather let this croſs make you zealous in God's cauſe, ſenſible in ours, and more ſenſible in all; which expreſs thus. You have been a great enemy to papiſts, if you love God be ſo ſtill, but more indeed than heretofore; for much of your zeal was heretofore waſted in words: call to remembrance that they were the perſons that propheſied of that croſs of yours long before it happened; they ſaw the ſtorm coming, being the principal contrivers and furtherers of the plot, the men that blew the coals, heat the iron, and made all things ready; they owe you a good turn, and will, if they can, pay it you; you ſee their hearts by their deeds, prove then your faith ſo too: the beſt good work you can do, is to do the beſt you can againſt them, that is, to ſee the law ſeverely, juſtly, and diligently executed.

And now we beſeech you, my lord, be ſenſible both of the ſtroke and hand that ſtriketh; learn of David to leave Shimei, and call upon God; he hath ſome great work to do, and he prepareth you for it; he would neither have you faint, nor yet bear this croſs with a ſtoical reſolution: there is a chriſtian mediocrity worthy of your greatneſs. I muſt be plain, perhaps raſh; had ſome notes which you had taken at ſermons been written in your heart to practiſe, this work had been done long ago, without the envy of your enemies; but

[a] My lord Bacon obſerves elſewhere, that the Scripture ſaith, there be that turn judgment into wormwood; and ſaith he, "ſurely there be alſo that turn it into vinegar; for injuſtice maketh it bitter, and delays "make it ſour." Eſſay LVI. Vol. I. p. 441.

but when we will not mind ourſelves, God (if we belong to him) takes us in hand; and becauſe he ſeeth that we have unbridleth ſtomachs, therefore he ſends outward croſſes, which, while they cauſe us to mourn, do comfort us, being aſſured teſtimonies of his love that ſends them. To humble ourſelves therefore before God, is the part of a chriſtian; but for the world and our enemies the counſel of the poet is apt,

Æneid. vi. 95. *Tu ne cede malis, ſed contra audentior ito.*

The laſt part of this counſel you forget, yet none need be aſhamed to make uſe of it, that ſo being armed againſt caſualties, you may ſtand firm againſt the aſſaults on the right hand, and on the left. For this is certain, the mind that is moſt prone to be puft up with proſperity, is moſt weak and apt to be dejected with the leaſt puff of adverſity. Indeed ſhe is ſtrong enough to make an able man ſtagger, ſtriking terrible blows: but true chriſtian wiſdom gives us armour of proof againſt all aſſaults, and teacheth us in all eſtates to be content: for though ſhe cauſe our trueſt friends to declare themſelves our enemies; though ſhe give heart then to the moſt cowardly to ſtrike us; though an hour's continuance countervails an age of proſperity; though ſhe caſt in our diſh all that ever we have done; yet hath ſhe no power to hurt the humble and wiſe, but only to break ſuch as too much proſperity hath made ſtiff in their own thoughts, but weak indeed; and fitted for renewing: when the wiſe rather gather from thence profit and wiſdom; by the example of David, who ſaid, *Before I was chaſtiſed I went aſtray.* Now then he that knoweth the right way, will look better to his footing. Cardan ſaith, that weeping, faſting, and ſighing, are the chief purges of grief; indeed naturally they do aſſuage ſorrow; but God in this caſe is the only and beſt phyſician; the means he hath ordained are the advice of friends, the amendment of ourſelves; for amendment is both phyſician and cure. For friends, although your lordſhip be ſcant, yet I hope you are not altogether deſtitute; if you be, do but look upon good books; they are true friends, that will neither flatter nor diſſemble: be you but true to yourſelf, applying what they teach unto the party grieved, and you ſhall need no other comfort nor counſel. To them, and to God's holy Spirit, directing you in the reading of them, I commend your lordſhip; beſeeching him to ſend you a good iſſue out of theſe troubles, and from henceforth to work a reformation in all that is amiſs, and a reſolute perſeverance, proceeding, and growth, in all that is good; and that for his glory, the bettering of yourſelf, this church, and commonwealth; whoſe faithful ſervant whilſt you remain,

I remain a faithful ſervant to you,

FR. BACON.

CXL. To Sir GEORGE VILLIERS.

SIR,

THE time is, as I ſhould think, now or never, for his majeſty to finiſh his good meaning towards me; if it pleaſe him to conſider, what is paſt, and what is to come.

If I would tender my profit, and oblige men unto me by my place and practice, I could have more profit than I could deviſe; and could oblige all the world, and offend none; which is a brave condition for a man's private. But my heart is not on theſe things. Yet on the other ſide, I would be ſorry that worthleſs perſons ſhould make a note that I get nothing but pains and enemies; and a little popular reputation, which followeth me whether I will or no. If any thing be to be done for yourſelf, I ſhould take infinite contentment, that my honour might wait upon yours; but I would be loth it ſhould wait upon any man's elſe. If you would put your ſtrength to this buſineſs, it is done; and that done, many things more will begin. God keep you ever. I reſt

Your true and devoted ſervant,

May 30. 1616.

FR. BACON.

CXLI. To the KING, about the Commendams.

May it pleaſe your moſt excellent Majeſty,

I Am not ſwift to deliver any thing to your Majeſty, before it be well weighed. But now that I have informed myſelf of as much as is neceſſary, touching this proceeding of the judges to the argument of the Commendams (notwithſtanding your Majeſty's pleaſure ſignified by me, upon your Majeſty's commandment in preſence of my lord chancellor and the biſhop of Wincheſter, to the contrary) I do think it fit to advertiſe your Majeſty what hath paſſed; the rather, becauſe I ſuppoſe the judges, ſince they perform'd not your commandment, have at leaſt given your Majeſty their reaſons of failing therein; I being to anſwer for the doing your Majeſty's commandments, and they for the not doing.

I did conceive, that in a cauſe that concerned your Majeſty and your royal power, the judges having heard your attorney-general argue the Saturday before, would of themſelves have taken farther time to be adviſed.

And (if I fail not in memory) my lord Coke received from your Majeſty's ſelf, as I take it, a precedent commandment in Hilary term, that both in the *rege inconſulto*, and in the Commendams, your attorney ſhould be heard to ſpeak, and then ſtay to be made of farther proceedings, till my lord had ſpoken with your Majeſty.

Nevertheleſs, hearing that the day appointed for the judges argument held, contrary to my expectation, I ſent on Thurſday in the evening (having received your Majeſty's commandment but the day before in the afternoon) a letter to my lord Coke; whereby I let him know, that upon ſome report of my lord of Wincheſter (who by your commandment was preſent at my argument of that which paſſed) it was your Majeſty's expreſs pleaſure, that no farther proceedings ſhould be, until you had conferred with your judges: which your Majeſty thought to have done at your being now laſt in town; but by reaſon of your many and weighty occaſions, your princely times would not ſerve; and that it was your pleaſure he ſhould ſignify ſo much to the reſt of the judges, whereof his lordſhip might not fail. His anſwer by word to my man was, that it were good the reſt of the judges underſtood ſo much from myſelf: whereupon I (that cannot ſkill of ſcruples in matter of ſervice) did write on Friday three ſeveral letters of like content to the judges of the common pleas, and the barons of the exchequer, and the other three judges of the king's bench, mentioning in that laſt my particular letter to my lord chief juſtice.

This was all I did, and thought all had been ſure; in ſo much as the ſame day being appointed in chancery for your Majeſty's great cauſe (followed by my lord Hunſden *) I writ two other letters to both the chief juſtices, to put them in mind of aſſiſting my lord chancellor at the hearing. And when my lord chancellor himſelf took ſome notice upon that occaſion openly in the chancery, that the Commendams could not hold preſently after, I heard the judges were gone about the Commendams; which I thought at firſt had been only to adjourn the court, but I heard after that they proceeded to argument.

* This caſe is reported by my lord Hobart, p. 109.

In this their doing, I conceive, they muſt either except to the nature of the commandment, or to the credence thereof; both which, I aſſure myſelf, your Majeſty will maintain.

For if they ſhould ſtand upon the general ground, † *Nulli negabimus, nulli differemus juſtitiam*, it receiveth two anſwers. The one, that reaſonable and mature advice may not be confounded with delay; and that they can well alledge when it pleaſeth them. The other is, that there is a great difference between a caſe merely between ſubject and ſubject, and where the king's intereſt is in queſtion directly or by conſequence. As for the attorney's place and commiſſion, it is as proper for him to ſignify the king's pleaſure to the judges, as for the ſecretary to ſignify the ſame to the privy council; and ſo it hath ever been.

† *Mag. Chart.*

Theſe things were a little ſtrange if there came not ſo many of them together, as the one maketh the other ſeem leſs ſtrange: but your Majeſty hath fair occaſions to remedy all, with ſmall aid; I ſay no more for the preſent.

I was a little plain with my lord Coke in theſe matters; and when his anſwer was, that he knew all theſe things; I ſaid he could never profit too much in knowing himſelf and his duty.

CXLII. A memorial for his MAJESTY, corrected with Sir Fr. Bacon's own hand. 1616.

IT ſeemeth this year of the fourteenth of his majeſty's reign, being a year of a kind of majority in his government, is conſecrate to juſtice [a]: which as his majeſty hath performed to his ſubjects in this late memorable occaſion, ſo he is now to render and perform to himſelf, his crown, and poſterity.

That his council ſhall perceive by that which his majeſty ſhall now communicate with them, that the maſs of his buſineſs is continually prepared in his own royal care and cogitations, howſoever he produceth the ſame to light, and to act *per opera dierum* [b].

That his majeſty ſhall make unto them now a declarative of two great cauſes, whereof he doubteth not they have heard by glimpſes; the one concerning his high court of chancery, the other concerning the church and prelacy; but both of them deeply touching his prerogative and ſovereignty, and the flowers of his crown.

That about the end of Hilary term laſt, there came to his majeſty's ears, only by common voice and report, not without great rumour and wonder, that there was ſomewhat done in the king's bench the laſt day of that term, whereby his chancery ſhould be pulled down, and be brought in queſtion for *praemunire*; being the moſt heinous offence after treaſon, and felony, and miſpriſion of treaſon; and that the time ſhould be when the chancellor lay at the point of death.

That his majeſty was ſo far from hearing of this by any complaint from his chancellor (who then had given over worldly thoughts) that he wrote letters of comfort to him upon this accident, before he heard from him; and for his attorney, his majeſty challenged him for not advertiſing him of that, of which it was proper for his majeſty to be informed from him.

That his majeſty being ſenſible of this ſo great novelty and perturbation in his courts of juſtice, nevertheleſs uſed this method and moderation, that before he would examine this great affront and diſgrace offered to his chancery and chancellor, he would firſt inform himſelf whether the chancery or chancellor were in fault; and whether the former precedents of chancery did warrant the proceedings there after judgment paſſed at common law (which was the thing in queſtion) and thereupon his majeſty called his learned counſel to him, and commanded them to examine the precedents of chancery, and to certify what they found: which they did; and by their certificate it appeareth, that the precedents of that kind were many and preciſe in the point, and conſtant, and in good times, and allowed many times by the judges themſelves.

That after this his majeſty received from the lord chancellor a caſe, whereby the queſtion was clearly ſet down and contained within the proper bounds of the preſent doubt; being, Whether upon apparent matter of equity, which the judges

[a] By the laws, ſeveral ages are aſſigned to perſons for ſeveral purpoſes: and by the common law the fourteenth year is a kind of majority, and accounted an age of diſcretion. At that time a man may agree or diſagree to a precedent marriage: the heir in ſocage may reject the guardian appointed by law, and chuſe a new one: and the woman at that age ſhall be out of ward, *etc.* *Stephens.*

[b] *Per opera dierum*, alluding to the gradations Almighty God was pleaſed to obſerve in the creating of the world. In this paragraph Sir Francis Bacon inſinuates, what he expreſly declares Vol. I. Eſſay XLVII. p. 434. that in all negotiations of difficulty, a man muſt firſt prepare buſineſs, and ſo ripen it by degrees. *Stephens.*

judges of the law by their place and oath cannot meddle with or relieve (if a judgment be once paſſed at common law) the ſubject ſhall periſh, or that the chancery ſhall relieve him; and whether there be any ſtatute of *praemunire* or other, to reſtrain this power in the chancellor; which caſe, upon the requeſt of the lord chancellor, his majeſty likewiſe referred to his learned counſel (and the prince's attorney Mr. Walter was joined with them) who, upon great advice and view of the original records themſelves, certified the chancery was not reſtrained by any ſtatute in that caſe.

That his majeſty again required his learned counſel to call the clerks of the king's bench to them, and to receive from them any precedents of indictments in the king's bench againſt the chancery for proceeding in the like caſe; who produced only two precedents, being but indictments offered or found, upon which there was no other proceeding; and the clerks ſaid, they had uſed diligence and could find no more.

That his majeſty, after he had received this ſatisfaction that there was ground for that the chancery had done, and that the chancery was not in fault, he thought then it was time to queſtion the miſdemeanor and contempt in ſcandalizing and diſhonouring his juſtice in that high court of chancery in ſo odious a manner; and commanded his attorney-general, with the advice of the reſt of his learned counſel, to proſecute the offenders in the ſtar-chamber, which is done; and ſome of them are fled, and others ſtand out and will not anſwer.

That there reſteth only one part more towards his majeſty's complete information in this cauſe: which is to examine that which was done in open court the ſaid laſt day of Hilary term, and whether the judges of the king's bench did commit any exceſs of authority; or did animate the offenders otherwiſe, than according to their duty and place; which enquiry, becauſe it concerneth the judges of a court to keep order and decorum, his majeſty thinketh not ſo convenient to uſe his learned counſel therein, but will commit the ſame to ſome of the council-table, and his learned counſel to attend them.

This declared, or what elſe his majeſty in his own high wiſdom ſhall think good; it will be fit time to have the certificate of the learned counſel openly read.

His majeſty may, if he pleaſe, forbear to publiſh at this time at the table the committees; but ſignify his pleaſure to themſelves afterwards.

The committees named by his majeſty, were the archbiſhop of Canterbury, ſecretary Lake, the chancellor of the exchequer, and the maſter of the rolls.

This report is to be prefixed, to be given in by Wedneſday at night, that his majeſty may communicate it with his council, and take farther order on Thurſday thereupon, if his majeſty be ſo pleaſed.

At this declaration, it is his majeſty's direction (to the end things may appear to be the more evenly carried) that neither my lord chancellor nor my lord chief juſtice be preſent.

But then when his majeſty entereth into the ſecond declarative, my lord chancellor is to be called for: but my lord chief juſtice not; becauſe it concerneth him.

For the ſecond declarative: that his majeſty hath reaſon to be offended and grieved, in that which paſſed touching the Commendams, both in matter and manner: for the matter, that his majeſty's religious care of the church and of the prelacy, and namely of his lords ſpiritual the biſhops, may well appear, firſt, in that he hath utterly expelled thoſe ſectaries or inconformable perſons that ſpurned at the government; ſecondly, that by a ſtatute made in the firſt year of his reign, he hath preſerved their livings from being waſted and dilapidated by long leaſes, and therein bound himſelf and his crown and ſucceſſion; and laſtly, that they ſee two biſhops privy counſellors at the table, which hath not been of late years.

That agreeably to this his majeſty's care and good affection, hearing that there was a caſe of the biſhop of Lincoln's, wherein his majeſty's ſupreme power of

granting Commendams (which in reſpect of the exility of biſhopricks is ſometimes neceſſary) was queſtioned to be overthrown or weakened; he commanded his attorney-general, not only to have care to maintain it, according to his place, but alſo that he ſhould relate to his majeſty how things paſſed; and did alſo command the biſhop of Wincheſter to be preſent at the publick argument of the caſe; and to report to his majeſty the true ſtate of that queſtion, and how far it extended.

This being accordingly done; then upon report of the biſhop of Wincheſter in preſence of the lord chancellor, his majeſty thought it neceſſary, that before the judges proceeded to declare their opinion they ſhould have conference with his majeſty, to the end to ſettle ſome courſe, that juſtice might be done, and his regal power (whereof his crown had been ſo long veſted) not touched nor diminiſhed: and thereupon commanded his attorney (who by his place ought properly to ſignify his majeſty's pleaſure to his judges, as his ſecretary doth to his privy council) in the preſence of the lord chancellor and the biſhop, to ſignify his pleaſure to the judges, that becauſe his majeſty thought it needful to conſult with them in that caſe before they proceeded to judgment; and that his majeſty's buſineſs (as they all knew) was very great, and Midſummer term ſo near at hand, and the cauſe argued by his attorney ſo lately, they ſhould put off the day till they might adviſe with his majeſty at his next coming to town. That his majeſty's attorney ſignified ſo much by his letters (the next day after he had received his commandment) to all the judges, and that in no imperious manner, but alledging the circumſtances aforeſaid, that the caſe was lately argued, his majeſty's buſineſs great, another term at hand, *etc.*

Now followeth the manner that was held in this, which his majeſty conceiveth was not only indiſcreet, but preſumptuous and contemptuous.

For firſt, they diſobeyed this his majeſty's commandment, and proceeded to publick argument notwithſtanding the ſame; and thought it enough to certify only their mind to his majeſty.

Secondly, in a general letter under all their hands (howſoever it may be upon divided opinion) they alledge unto his majeſty their oath; and that his majeſty's commandment (for the attorney's letter was but the caſe that it was wrapped in) was againſt law; as if maturity and a deliberate proceeding were a delay, or that commandment of ſtay in reſpect of ſo high a queſtion of ſtate and prerogative, were like a commandment gotten by importunity, or in favour of a ſuitor.

Thirdly, above all, it is to be noted and juſtly doubted, that upon the contrary, in this that they have done, they have broken their oath; for their oath is to counſel the king when they ſhall be called; and if when the king calleth them to counſel, they will do the deed firſt, and give him counſel after, this is more than a ſimple refuſal.

Laſtly, it is no new thing upon divers particular occaſions, of a far higher nature than the conſulting with their ſovereign about a cauſe of great moment, to put off days, and yet no breach of oath. And there was another fair paſſage well known to my lord Coke, that he might have uſed if it had pleaſed him; for that very day was appointed for the king's great cauſe in the chancery, both for my lord Hobart and him; which cauſe ought to have had precedence afore any private cauſe, as they would have this ſeem to be.

To this letter his majeſty made a moſt princely and prudent anſwer, which I leave to itſelf.

Upon this declaration his majeſty will be pleaſed to have the judges letter and his own letter read.

Then his majeſty (for his part as I conceive) will be pleaſed to aſk the advice of his council as well for the ſtay of the new day, which is Saturday next, as for the cenſure and reproof of the contempt paſſed: for though the judges are a reverend body, yet they are (as all ſubjects are) corrigible.

CXLIII. To Sir GEORGE VILLIERS.

SIR,

THE king giveth me a noble choice; and you are the man my heart ever told me you were. Ambition would draw me to the latter part of the choice; but in reſpect of my hearty wiſhes, that my lord chancellor may live long; and the ſmall hopes I have, that I ſhall live long myſelf; and, above all, becauſe I ſee his majeſty's ſervice daily and inſtantly bleedeth; towards which, I perſuade myſelf (vainly perhaps, but yet in mine own thoughts firmly and conſtantly) that I ſhall give, when I am of the table, ſome effectual furtherance (as a poor thread of the labyrinth, which hath no other virtue, but an united continuance, without interruption or diſtraction) I do accept of the former, to be counſellor for the preſent, and to give over pleading at bar; let the other matter reſt upon my proof, and his majeſty's pleaſure, and the accidents of time. For, to ſpeak plainly, I would be loth that my lord chancellor, to whom I owe moſt after the king and yourſelf, ſhould be locked to his ſucceſſor, for any advancement or gracing of me. So I ever remain

Your true and moſt devoted, and moſt obliged ſervant,

June 3, 1616. FR. BACON.

CXLIV. To Sir GEORGE VILLIERS.

SIR,

I Send his Majeſty a draught of the act of council concerning the judges letter, penned as near as I could to his majeſty's inſtructions received in your preſence. I then told his majeſty my memory was not able to keep way with his; and therefore his majeſty will pardon me for any omiſſions or errors, and be pleaſed to ſupply and reform the ſame. I am preparing ſome other materials for his majeſty's excellent hand, concerning buſineſs that is coming on: for ſince his majeſty hath renewed my heart within me, methinks I ſhould double my endeavours. God ever preſerve and proſper you. I reſt,

Your moſt devoted and bounden ſervant,

June 12. 1616. FR. BACON.

CXLV. Touching the Commendams.

[a] At Whitehall the ſixth of June, Anno 1616.

Preſent the KING's MAJESTY.

Lord Archbiſhop of Cant.	Lord Wotton.
Lord Chancellor.	Lord Stanhope.
Lord Treaſurer.	Lord Fenton.
Lord Privy Seal.	Mr. Vice-Chamberlain.
Lord Chamberlain.	Mr. Secretary Winwood.
Duke of Lenox.	Mr. Secretary Lake.
Lord Zouche.	Mr. Chancellor of the Exchequer.
Biſhop of Winton.	Maſter of the Rolls.
Lord Knollys.	

HIS Majeſty having this day given order for meeting of the council, and that all the judges (being twelve in number) ſhould be ſent for to be preſent; when the lords were ſat, and the judges ready attending, his majeſty came himſelf

[a] This is the act of council referred to in the preceding letter, and drawn up by Sir Fr. Bacon; which, being written in a fair manner, I accidentally bought, and have corrected. If any errors remain, as I believe the reader will think there doth; it is becauſe I had no opportunity to peruſe the council-books. *Stephens.*

ſelf in perſon to council, and opened to them the cauſe of that aſſembly; which was: That he had called them together concerning a queſtion that had relation to no private perſon, but concerned God and the King, the power of his crown, and the ſtate of this church, whereof he was protector; and that there was no fitter place to handle it, than at the head of his council-table: that there had been a queſtion pleaded and argued concerning Commendams; the proceedings wherein had either been miſreported or miſhandled; for his majeſty a year ſince had received advertiſements concerning the cauſe in two entrances, by ſome that intrenched into his prerogative royal in the general power of granting Commendams; and by others, that the doubt reſted only upon a ſpecial nature of a Commendam, ſuch as in reſpect of the incongruity and exorbitant form thereof, might be queſtioned, without impeaching or weakening the general power of all.

Whereupon his majeſty, willing to know the true ſtate thereof, commanded the lord * biſhop of Wincheſter, and Mr. ſecretary Winwood to be preſent at the next argument, and to report the ſtate of the queſtion and proceeding to his majeſty. But Mr. ſecretary Winwood being abſent by occaſion, the lord of Wincheſter only was preſent, and made information to his majeſty of the particulars thereof, which his majeſty commanded him to report to the board. Whereupon the lord of Wincheſter ſtood up and ſaid, that ſerjeant Chiborne, who argued the cauſe againſt the Commendams, had maintained divers poſitions and aſſertions very prejudicial to his majeſty's prerogative royal; as firſt, that the tranſlation of biſhops was againſt the canon law, and for authority vouched the canons of the council of Sardis; that the king had not power to grant Commendams, but in caſe of neceſſity; that there could be no neceſſity, becauſe there could be no need, for augmentation of living, for no man was bound to keep hoſpitality above his means; beſides many other parts of his argument tending to the overthrow of his majeſty's prerogative in caſe of Commendams.

* D. Bilſon, who died June 18, 1616.

The lord of Wincheſter having made his report, his majeſty reſumed his former narrative, letting the lords know, that after the lord of Winton had made unto his majeſty a report of that which paſſed at the argument of the cauſe, like in ſubſtance unto that which now had been made; his majeſty apprehending the matter to be of ſo high a nature, commanded his attorney-general to ſignify his majeſty's pleaſure unto the lord chief juſtice; That in regard of his majeſty's moſt weighty occaſions, and for that his majeſty held it neceſſary upon the lord of Winton's report, that his majeſty be firſt conſulted with, before the judges proceed to argue it; therefore the day appointed for the judges argument ſhould be put off till they might ſpeak with his majeſty; and this letter of his majeſty's attorney was, by his majeſty's commandment, openly read as followeth, *in hæc verba.*

MY LORD,

" IT is the king's expreſs pleaſure, that becauſe his majeſty's time would not " ſerve to have conference with your lordſhip and his judges, touching the " cauſe of Commendams, at his laſt being in town; in regard of his majeſty's " other moſt weighty occaſions; and for that his majeſty holdeth it neceſſary, " upon the report which my lord of Wincheſter (who was preſent at the laſt " arguments by his majeſty's royal commandment) made to his majeſty, that his " majeſty be firſt conſulted with, ere there be any farther proceedings by argu- " ments by any of the judges, or otherwiſe; therefore that the day appointed " for the farther proceedings by arguments of the judges in that caſe, be put off " till his majeſty's farther pleaſure be known, upon conſulting with him; and, " to that end, that your lordſhip forthwith ſignify his commandment to the reſt " of the judges: whereof your lordſhip may not fail: and ſo I leave your lordſhip " to God's goodneſs.

This Thurſday afternoon, April 25, 1616.

Your loving friend to command,

FR. BACON.

THAT

THAT upon this letter received, the lord chief juſtice returned word to his majeſty's ſaid attorney by his ſervant; That it was fit the reſt of his brethren ſhould underſtand his majeſty's pleaſure immediately by letters from his ſaid attorney to the judges of the ſeveral benches: and accordingly it was done; whereupon all the ſaid judges aſſembled, and by their letter under their hands certified his majeſty, that they held thoſe letters, importing the ſignification aforeſaid, to be contrary to law, and ſuch as they could not yield to the ſame by their oath; and that thereupon they had proceeded at the day, and did now certify his majeſty thereof: Which letter of the judges his majeſty alſo commanded to be openly read, the tenor whereof followeth, *in haec verba.*

Moſt dread and moſt gracious Sovereign,

"IT may pleaſe your moſt excellent Majeſty to be advertiſed, that this letter "here incloſed was delivered unto me your chief juſtice on Thurſday laſt in "the afternoon, by a ſervant of your Majeſty's attorney-general; and letters of "like effect were on the day following ſent from him by his ſervant to us your "Majeſty's juſtices of every of the courts at Weſtminſter. We are and ever will "be ready with all faithful and true hearts, according to our bounden duties, to "ſerve and obey your Majeſty, and think ourſelves moſt happy to ſpend our "times and abilities to do your Majeſty true and faithful ſervice in this preſent "caſe mentioned in this letter. What information hath been made unto you, "whereupon Mr. Attorney doth ground his letter, from the report of the biſhop "of Winton, we know not; this we know, that the true ſubſtance of the cauſe "ſummarily is thus; it conſiſteth principally upon the conſtruction of two acts "of parliament, the one of the twenty fifth year of K. Edw. III. and the other "of the twenty fifth year of K. Hen. VIII. whereof your Majeſty's judges "upon their oaths, and according to their beſt knowledge and learning, are "bound to deliver their true underſtanding faithfully and uprightly; and the "caſe between two for private intereſt and inheritance earneſtly called on for "juſtice and expedition. We hold it our duty to inform your Majeſty, that our "oath is in theſe expreſs words: That in caſe any letters come unto us contrary "to law, that we do nothing by ſuch letters but certify your Majeſty thereof, "and go forth to do the law, notwithſtanding the ſame letters. We have ad-"viſedly conſidered of the ſaid letter of Mr. Attorney, and with one conſent do "hold the ſame to be contrary to law, and ſuch as we could not yield to the "ſame by our oath, aſſuredly perſuading ourſelves that your Majeſty being truly "informed, that it ſtandeth not with your royal and juſt pleaſure to give way "to them: And knowing your Majeſty's zeal to juſtice to be moſt renowned, "therefore we have, according to our oaths and duties, at the very day prefixed "the laſt term, proceeded, and thereof certified your Majeſty; and ſhall ever "pray to the Almighty for your Majeſty in all honour, health and happineſs "long to reign over us.

Serjeant's Inn, 25 April 1616.

Edw. Coke, Henry Hobart, Laur. Tanfield, Pet. Warburton, George Snigge, Ja. Altham, Ed. Bromley, John Croke, Humphry Winche, John Dodderidge, Auguſtine Nicolls, Robert Houghton.

HIS majeſty having conſidered of this letter, by his princely letters returned anſwer, reporting himſelf to their own knowledge and experience, what princely care he hath ever had ſince his coming to the crown, to have juſtice duly adminiſter'd to his ſubjects, with all poſſible expedition; and how far he was from croſſing or delaying of juſtice, when the intereſt of any private perſon was queſtioned: but on the other ſide expreſſing himſelf, that where the caſe concerned the high powers and prerogatives of his crown, he would not endure to have them wounded through the ſides of a private perſon; admoniſhing them alſo, laſtly, of a cuſtom lately entertained, of a greater boldneſs to diſpute the high points of his majeſty's prerogative in a popular and unlawful liberty of argument more than in former times: and making them perceive alſo how weak

and impertinent the pretence of allegation of their oath was in a caſe of this nature, and how well it might have been ſpared; with many other weighty points in the ſaid letter contained: which letter alſo by his majeſty's appointment and commandment was publickly read *in haec verba.*

James *Rex.*

" TRUSTY and well-beloved counſellors, and truſty and well-beloved, " we greet you well. We perceive by your letter, that you conceive the " commandment given you by our attorney-general in our name to have pro- " ceeded upon wrong information: but if you liſt to remember what princely " care we have ever had, ſince our coming to this crown, to ſee juſtice duly " adminiſter'd to our ſubjects, with all poſſible expedition; and how far we " have ever been from urging the delay thereof in any ſort, you may ſafely " perſuade yourſelves that it was no ſmall reaſon that moved us to ſend you " that direction. You might very well have ſpared your labour in informing us " of the nature of your oath; for although we never ſtudied the common law " of England, yet are we not ignorant of any points which belong to a king " to know: we are therefore to inform you hereby, that we are far from " croſſing or delaying any thing which may belong to the intereſt of any private " party in this caſe; but we cannot be contented to ſuffer the prerogative royal " of our crown to be wounded through the ſides of a private perſon: we have " no care at all which of the parties ſhall win his proceſs in this caſe, ſo that " right prevail, and that juſtice be truly adminiſter'd. But on the other ſide, " we have reaſon to foreſee that nothing be done in this caſe which may " wound our prerogative in general; and therefore ſo that we may be ſure " that nothing ſhall be debated amongſt you which may concern our general " power of giving Commendams, we deſire not the parties to have one hour's " delay of juſtice: but that our prerogative ſhould not be wounded in that " regard for all times hereafter, upon pretext of private perſons intereſt, we " ſent you that direction; which we account as well to be wounded if it be " publickly diſputed upon, as if any ſentence were given againſt it: we " are therefore to admoniſh you, that ſince the prerogative of our crown hath " been more boldly dealt withal in Weſtminſter-Hall, during the time of our " reign, than ever it was before in the reigns of divers princes immediately pre- " ceding us, that we will no longer endure that popular and unlawful liberty; " and therefore we were juſtly moved to ſend you that direction to forbear to " meddle in a cauſe of ſo tender a nature, till we had farther thought upon it. " We have cauſe indeed to rejoice of your zeal for your ſpeedy execution of " juſtice; but we would be glad that all our ſubjects might ſo find the fruits " thereof, as that no pleas before you were of older date than this is. But as " to your argument, which you found upon your oath, you give our prede- " ceſſors, who firſt founded the oath, a very charitable meaning, in perverting " their intention and zeal to juſtice, to make a weapon of it to uſe againſt " their ſucceſſors: for although your oath be, that you ſhall not delay juſtice " between any private perſons or parties, yet was it not meant that the king " ſhould thereby receive harm, before he be forewarned thereof; neither can " you deny, but that every term you will out of your own diſcretions, for " reaſons known unto you, put off either the hearing or determining of any " ordinary cauſe betwixt private perſons till the next term following. Our " pleaſure therefore is, who are the head and fountain of juſtice under God in " our dominions, and we out of our abſolute power and authority royal do " command you, that you forbear to meddle any farther in this plea till our " coming to town, and that out of our own mouth you hear our pleaſure in " this buſineſs; which we do out of the care we have, that our prerogative " may not receive an unwitting and indirect blow; and not to hinder juſtice " to be adminiſter'd to any private parties, which no importunities ſhall per- " ſuade us to move you in. Like as, only for the avoiding of the unreaſon- " able importunity of ſuitors in their own particular, that oath was by our

" predeceſſors ordained to be miniſter'd unto you: ſo we wiſh you heartily " well to fare.

Poſtſcript. " You ſhall upon the receipt of this letter call our attorney-" general unto you, who will inform you of the particular points which we " are unwilling to be diſputed of in this caſe."

This letter being read, his majeſty reſolved to take into his conſideration the parts of the judges letter and other their proceedings in that cauſe, and the errors therein contained and committed; which errors his majeſty did ſet forth to be both in matter and manner: in matter, as well by way of omiſſion as commiſſion; for omiſſion, that it was a fault in the judges, that when they heard a counſellor at the bar preſume to argue againſt his majeſty's prerogative, which in this caſe was in effect his ſupremacy, they did not interrupt and reprove ſharply that baſe and bold courſe of defaming or impeaching things of ſo high a nature by diſcourſe; eſpecially ſince his majeſty hath obſerved, that ever ſince his coming to the crown, the popular ſort of lawyers have been the men, that moſt affrontedly in all parliaments have trodden upon his prerogative; which being moſt contrary to their vocation of any men, ſince the law or lawyers can never be reſpected, if the king be not reverenced; it doth therefore beſt become the judges of any, to check and bridle ſuch impudent lawyers, and in their ſeveral benches to diſgrace them that bear ſo little reſpect to their king's authority and prerogative: that his majeſty had a double prerogative, whereof the one was ordinary and had relation to his private intereſt, which might be, and was every day, diſputed in Weſtminſter-Hall; the other was of an higher nature, referring to his ſupreme and imperial power and ſovereignty, which ought not to be diſputed or handled in vulgar argument: but that of late the courts of the common law are grown ſo vaſt and tranſcendent, as they did both meddle with the king's prerogative, and had incroached upon all other courts of juſtice; as the high commiſſion, the councils eſtabliſhed in Wales and at York, the court of requeſts.

Concerning that which might be termed commiſſion, his majeſty took exception at the judges letter both in matter and form: for matter, his majeſty plainly demonſtrated, that whereas it was contained in the judges letter, that the ſignification of his majeſty's letter as aforeſaid was contrary to law, and not agreeable to the oath of a judge; that could not be: firſt, for that the putting off any hearing or proceeding upon any juſt or neceſſary cauſe, is no denying or delaying of juſtice, but wiſdom and maturity of proceeding; and that there cannot be a more juſt and neceſſary cauſe of ſtay, than the conſulting with the king, where the cauſe concerns the crown; and that the judges did daily put off cauſes upon lighter occaſions: and likewiſe his majeſty did deſire to know of the judges, how his calling them to conſult with him was contrary to law, which they could never anſwer unto.

Secondly, That it was no bare ſuppoſition or ſurmiſe, that this cauſe concerned the king's prerogative; for that it had been directly and plainly diſputed at the bar; and the very diſputing thereof in a publick audience, is both dangerous and diſhonourable to his majeſty.

Thirdly, That the manner of the putting off that which the king required, was not infinite nor long time, but grounded upon his majeſty's weighty occaſions, which were notorious; by reaſon whereof he could not ſpeak with the judges before the argument; and that there was a certain expectation of his majeſty's return at Whitſuntide: and likewiſe that the cauſe had been ſo lately handled and argued, and would not receive judgment by the Eaſter term next, as the judges themſelves afterwards confeſſed.

And afterwards, becauſe there was another juſt cauſe of abſence for the two chief juſtices, for that they ought to have aſſiſted the lord chancellor the ſame day in a great cauſe of the king's, followed by the lord Hunſdon againſt the lord William Howard in chancery; which cauſe of the king's, eſpecially being ſo worthy, ought to have had precedency before any cauſe betwixt party and party. Alſo whereas it was contained in the judges letter that the cauſe of

Commendams was but a cauſe of private intereſt between party and party, his majeſty ſhewed plainly the contrary; not only by the argument of ſerjeant Chiborne, which was before his commandment, but by the argument of the judges themſelves, namely juſtice Nicholls, which was after; but eſpecially ſince one of the parties is a biſhop who pleaded for the Commendams by the virtue of his majeſty's prerogative.

Alſo whereas it was contained in the judges letter, that the parties called upon them earneſtly for juſtice, his majeſty conceived it to be but pretence; urging them to prove that there was any ſolicitation by the parties for expedition, otherwiſe than in an ordinary courſe of attendance; which they could not prove.

As for the form of the letter, his majeſty noted, that it was a new thing, and very indecent and unfit for ſubjects to diſobey the king's commandment, but moſt of all to proceed in the mean time, and to return to him a bare certificate; whereas they ought to have concluded with the laying down and repreſenting of their reaſons modeſtly to his majeſty, why they ſhould proceed; and ſo to have ſubmitted the ſame to his princely judgment, expecting to hear from him whether they had given him ſatisfaction.

After this his majeſty's declaration, all the judges fell down upon their knees, and acknowledged their error for matter and form, humbly craving his majeſty's gracious favour and pardon for the ſame.

But for the matter of the letter, the lord chief juſtice of the king's bench enter'd into a defence thereof; the effect whereof was, that the ſtay required by his majeſty was a delay of juſtice, and therefore contrary to law and the judges oath; and that the judges knew well amongſt themſelves, that the caſe (as they meant to handle it) did not concern his majeſty's prerogative of granting of Commendams: and that if the day had not held by the not coming of the judges, the ſuit had been diſcontinued, which had been a failing of juſtice, and that they could not adjourn it, becauſe Mr. Attorney's letter mentioned no day certain, and that an adjournment muſt always be to a day certain.

Unto which anſwer of the chief juſtice his majeſty did reply; that for the laſt conceit, it was mere ſophiſtry, for that they might in their diſcretions have prefixed a convenient day, ſuch as there might have been time for them to conſult with his majeſty before, and that his majeſty left that point of form to themſelves.

And for that other point, that they ſhould take upon them peremptorily to diſcern whether the plea concerned the king's prerogative, without conſulting with his majeſty firſt, and informing his princely judgment, was a thing prepoſterous; for that they ought firſt to have made that appear to his majeſty, and ſo to have given him aſſurance thereof upon conſulting with him.

And for the matter, that it ſhould be againſt the law and againſt their oath, his majeſty ſaid he had ſpoken enough before; unto which the lord chief juſtice in effect had made no anſwer, but only inſiſted upon the former opinion; and therefore the king required the lord chancellor to deliver his opinion upon that point, Whether the ſtay that had been required by his majeſty were contrary to law, or againſt the judges oath.

The chancellor ſtood up and moved his majeſty, that becauſe this queſtion had relation to matter of law, his majeſty would be informed by his learned counſel firſt, and they firſt to deliver their opinions, which his majeſty commanded them to do.

Whereupon his majeſty's attorney-general gave his opinion, that the putting off of the day in manner as was required by his majeſty, to his underſtanding was without all ſcruple no delay of juſtice, nor danger of the judges oath; inſiſting upon ſome of the reaſons which his majeſty had formerly opened, and adding, that the letter he had formerly written by his majeſty's command, was no imperious letter; as to ſay his majeſty for certain cauſes, or for cauſes known to himſelf, would have them put off the day; but fairly and plainly expreſſed

preſſed the cauſes unto them; for that the king conceived upon my lord of Winton's report, that the cauſe concerned him; and that his majeſty would have willingly ſpoken with them before, but by reaſon of his important buſineſs could not; and therefore required a ſtay till they might conveniently ſpeak with him, which they knew could not be long. And in concluſion of his ſpeech wiſhed the judges to conſider ſeriouſly with themſelves, whether they were not in greater danger of breach of their oaths by the proceedings, than they would have been by their ſtay; for that it is part of their oath to counſel his majeſty when they are called; and if they will proceed firſt in a buſineſs whereupon they are called to counſel, and will counſel him when the matter is paſt, it is more than a ſimple refuſal to give him counſel; and ſo concluded his ſpeech, and the reſt of the learned counſel conſented to his opinion.

Whereupon the lord chief juſtice of the king's bench, anſwering nothing to the matter, took exception that the king's counſel learned ſhould plead or diſpute with the judges; for he ſaid they were to plead before judges, and not to diſpute with them. Whereunto the king's attorney replied, that he found that exception ſtrange; for that the king's learned counſel were by oath and office, and much more where they had the king's expreſs commandment, without fear of any man's face, to proceed or declare againſt any the greateſt peer or ſubject of the kingdom; and not only any ſubject in particular, but any body of ſubjects or perſons, were they judges, or were they of an upper or lower houſe of parliament, in caſe they exceed the limits of their authority, or took any thing from his majeſty's royal power or prerogative; and ſo concluded, that this challenge, and that in his majeſty's preſence, was a wrong to their places, for which he and his fellows did appeal to his majeſty for reparation. And thereupon his majeſty did affirm, that it was their duty ſo to do, and that he would maintain them therein, and took occaſion afterward again to ſpeak of it; for when the lord chief juſtice ſaid, he would not diſpute with his majeſty, the king replied, That the judges would not diſpute with him, nor his learned counſel might not diſpute with them; ſo whether they did well or ill, it muſt not be diſputed.

After this the lord chancellor declared his mind plainly and clearly, that the ſtay that had been by his majeſty required, was not againſt the law, nor a breach of the judges oath, and required that the judges oath itſelf might be read out of the ſtatute, which was done by the king's ſolicitor, and all the words thereof weighed and conſidered.

Thereupon his majeſty and the lords thought good to aſk the judges ſeverally their opinions; the queſtion being put in this manner: Whether, if at any time, in a caſe depending before the judges, his majeſty conceived it to concern him either in power or profit, and thereupon required to conſult with them, and that they ſhould ſtay proceedings in the mean time, they ought not to ſtay accordingly? They all (the lord chief juſtice only excepted) yielded that they would, and acknowledged it to be their duties ſo to do; only the lord chief juſtice of the king's bench ſaid for anſwer, that when the caſe ſhould be, he would do that which ſhould be fit for a judge to do. And the lord chief juſtice of the common-pleas, who had aſſented with the reſt, added, that he would ever truſt the juſtice of his majeſty's commandment. After this was put to a point, his majeſty thought fit, in reſpect of the farther day of argument, appointed the Saturday following for the Commendams, to know from his judges what he might expect from them concerning the ſame. Whereupon the lord of Canterbury breaking the caſe into ſome queſtions, his majeſty did require his judges to deal plainly with him, whether they meant in their argument to touch the general power of granting Commendams, yea or no? Whereupon all the ſaid judges did promiſe and aſſure his majeſty, that in the argument of the ſaid caſe of Commendams, they would ſpeak nothing which ſhould weaken or draw into doubt his majeſty's prerogative for granting of them; but intended particularly to inſiſt upon the points of *lapſe* and other judicial points of this caſe, which they conceived to be of a form differing from all other Commendams which have been practiſed.

The

The judges alſo went farther, and did promiſe his majeſty, that they would not only abſtain from ſpeaking any thing to weaken his majeſty's prerogative of Commendams, but would directly and in plain terms affirm the ſame, and correct the erroneous and bold ſpeeches which had been uſed at the bar in derogation thereof.

Alſo the judges did in general acknowledge and profeſs with great forwardneſs, that it was their duty, if any counſellor at the law preſumed at any time to call in queſtion his majeſty's high prerogative, that they ought to reprehend them and ſilence them; and all promiſed ſo to do hereafter.

Laſtly, the two judges that were then next to argue, Mr. Juſtice Dodderidge, and Mr. Juſtice Winch opened themſelves unto his majeſty thus far; that they would inſiſt chiefly upon the *lapſe*, and ſome points of uncertainty, repugnancy, and abſurdity, being peculiar to this Commendam; and that they would ſhew their diſlike of that which had been ſaid at the bar for the weakening of the general power; and Mr. Juſtice Dodderidge ſaid he would conclude for the king, that the church was void and in his majeſty's gift; he alſo ſaid that the king might give a Commendam to a biſhop either before or after his conſecration, and that he might give it him during his life, or for a certain number of years.

The judges having thus far ſubmitted and declared themſelves, his majeſty commanded them to keep the bounds and limits of their ſeveral courts, not to ſuffer his prerogative to be wounded by raſh and unadviſed pleading before them, or by new invention of law: for as he well knew the true and ancient common law is the moſt favourable for kings of any law in the world; ſo he adviſed them to apply their ſtudies to that ancient and beſt law, and not to extend the power of any other of their courts beyond their due limits; following the precedents of the beſt ancient judges in the times of the beſt government; and that then they might aſſure themſelves that he for his part in his protection of them, and expediting of juſtice, would walk in the ſteps of ancient and beſt kings. Whereupon he gave them leave to proceed in their argument.

When the judges were removed, his majeſty that had forborn to aſk the voices and opinions of his council before the judges, becauſe he would not prejudicate the freedom of the judges opinion, concerning whether the ſtay of proceedings, that had been by his majeſty required, could by any conſtruction be thought to be within the compaſs of the judges oath (which they had heard read unto them) did then put the queſtion to his council; who all with one conſent did give opinion, that it was far from any colour or ſhadow of ſuch interpretation, and that it was againſt common ſenſe to think the contrary, eſpecially ſince there is no mention made in their oath of delay of juſtice, but only that they ſhould not deny juſtice, nor be moved by any of the king's letters, to do any thing contrary to law or juſtice.

G. Cant. Tho. Elleſmere, Canc. *Th. Suffolk, E. Worceſter, Pembroke, Nottingham, Lenox, W. Knollys, John Digby, Ralph Winwood, Tho. Lake, Fulke Greville, Jul. Cæſar, Fra. Bacon.*

CXLVI. To Sir GEORGE VILLIERS.

SIR,

I Do think you may do yourſelf honour, and, that which is more, do a good work; if you will aſſiſt and perfect a motion begun (and that upon a good ground, both of ſubmiſſion and conformity) for the reſtoring of doctor Burgeſs to preach[a]; and I wiſh likewiſe, that if Grays-Inn ſhould think good (after he is free from the ſtate) to chuſe him for their preacher, his majeſty ſhould not

[a] Soon after this date doctor Burgeſs was preſented to the parſonage of Sutton-Colfield in Warwickſhire. In 1620 he attended Sir Horace Vere into the Palatinate, when that noble general conducted thither a gallant regiment, the largeſtnu for mber, and greateſt for quality (being much compoſed of gentlemen) that had been ſeen. *Stephens.*

not be againſt it: for certainly we ſhould watch him well if he ſhould fly forth; ſo as he cannot be placed in a more ſafe auditory. This may ſeem a trifle, but I do aſſure you I do ſcarce know a particular, wherein you may open more honeſt mouths to ſpeak honour of you, than this. And I do extremely deſire there may be a full cry from all ſorts of people (eſpecially the beſt) to ſpeak, and to trumpet out your commendations. I pray you take it to heart, and do ſomewhat in it. I reſt,

Your devoted and bounden ſervant,

June 12. 1616. FR. BACON.

CXLVII. To Sir GEORGE VILLIERS.

SIR,

THERE is a particular wherein I think you may do yourſelf honour, which, as I am informed, hath been laboured by my lady of Bedford [a], and put in good way by the biſhop of Bath and Wells [b], concerning the reſtoring to preach of a famous preacher, one doctor Burgeſs; who, though he hath been ſilenced a great time, yet he hath now made ſuch a ſubmiſſion touching his conformity, as giveth ſatisfaction. It is much deſired alſo by Grays-Inn (if he ſhall be free from the ſtate) to chuſe him for their preacher: and certainly it is ſafer to place him there, than in another auditory, becauſe he will be well watched, if he ſhould any ways fly forth in his ſermons beyond duty. This may ſeem a trifle, but, I do aſſure you, in opening this man's mouth to preach, you ſhall open very many mouths to ſpeak honour of you; and I confeſs I would have a full cry of puritans, of papiſts, of all the world to ſpeak well of you; and beſides I am perſuaded (which is above all earthly glory) you ſhall do God good ſervice in it. I pray deal with his majeſty in it. I reſt,

Your devoted and bounden ſervant,

June 13. 1616. FR. BACON.

[a] My lady of Bedford, ſo much celebrated by doctor Donne, and Sir William Temple, for the admirable diſpoſition of her garden at Moor-Park, was ſiſter and co-heir to the laſt lord Harrington of Exton; who dying in the entrance of the year 1614, and the 22d of his age, revived in the nation the ſenſe it had of the loſs of prince Henry, as being a young nobleman of great hopes and piety. This lady diſpoſed of much of the eſtate ſhe had from her brother; ſelling Burley upon the Hill in the county of Rutland, to the then marquis of Buckingham, where he afterwards adorned the ſeat with noble ſtructures, which were deſtroy'd in the time of our civil wars. But this place has now recover'd its ancient ſplendour at the expence, and by the direction of its preſent lord the earl of Nottingham. *Stephens.*

[b] This biſhop was fifth ſon to Sir Edward Montague, and brother to Edward the firſt lord Montague of Boughton, a prelate of great learning and eloquence, and very munificent; and by ſome called king James's eccleſiaſtical favourite. In 1616 he was tranſlated to Winchester, and dying in two years time, he was buried in the body of the abbey-church of Bath, which with great coſt and care he had preſerved from the ruins, which time and neglect were bringing upon it. *Stephens.*

CXLVIII. To Sir GEORGE VILLIERS.

SIR,

I Send you incloſed a warrant for my lady of Somerſet's pardon, reformed in that main and material point, of inſerting a clauſe [that ſhe was not a principal, but an acceſſary before the fact, by the inſtigation of baſe perſons.] Her friends think long to have it diſpatched, which I marvel not at, for that in matter of life moments are numbred [a].

I do more and more take contentment in his majeſty's choice of Sir Oliver St. John, for his deputy of Ireland, finding, upon divers conferences with him,

[a] Of the trial and conviction of the counteſs of Somerſet, for being acceſſary to the murder of Sir Thomas Overbury, an account may be ſeen in Mr. Stephens's Introduction to Sir Francis Bacon's letters and memoirs; but the lord high ſteward, and the peers, obſerving that there had been ſatisfaction made to juſtice, that ſhe had been ſeduced by baſe perſons, and that ſhe had freely confeſſed her crime, interceded with the king for her pardon.

him, his great ſufficiency; and I hope the good intelligence which he purpoſeth to hold with me, by advertiſements from time to time, ſhall work a good effect for his majeſty's ſervice.

I am wonderful deſirous to ſee that kingdom flouriſh, becauſe it is the proper work and glory of his majeſty and his times. And his majeſty may be pleaſed to call to mind, that a good while ſince, when the great rent and diviſions were in the parliament of Ireland, I was no unfortunate remembrancer to his majeſty's princely wiſdom in that buſineſs. God ever keep you and proſper you.

Your true and moſt devoted and bounden ſervant,

1 July 1616. FR. BACON.

CXLIX. To Sir GEORGE VILLIERS.

SIR,

I Think I cannot do better ſervice towards the good eſtate of the kingdom of Ireland, than to procure the king to be well ſerved in the eminent places of law and juſtice: I ſhall therefore name unto you for the attorney's place there, or for the ſolicitor's place, if the new ſolicitor ſhall go up, a gentleman of mine own breeding and framing, Mr. Edward Wyrthington of Grays-Inn; he is born to eight hundred pounds a year; he is the eldeſt ſon of a moſt ſevere juſticer, amongſt the recuſants of Lancaſhire, and a man moſt able for law and ſpeech, and by me trained in the king's cauſes. My lord deputy, by my deſcription, is much in love with the man. I hear my lord of Canterbury, and Sir Thomas Laque, ſhould name one Sir John Beare, and ſome other mean men. This man I commend upon my credit, for the good of his majeſty's ſervice. God ever preſerve and proſper you. I reſt,

Your moſt devoted, and moſt bounden ſervant,

2 July 1616. FR. BACON.

CL. To Sir GEORGE VILLIERS, about Iriſh affairs.

SIR,

BECAUSE I am uncertain whether his majeſty will put to a point ſome reſolutions touching Ireland, now at Windſor; I thought it my duty to attend his majeſty by my letter (and thereby to ſupply my abſence) for the renewing of ſome former commiſſions for Ireland, and the framing of a new commiſſion for the wards and the alienations, which appertain properly to me as his majeſty's attorney, and have been accordingly referred by the lords. I will undertake that they are prepared with a greater care, and better application to his majeſty's ſervice in that kingdom, than heretofore they have been; and therefore of that I ſay no more. And for the inſtructions of the new deputy, they have been ſet down by the two ſecretaries, and read to the board; and being things of an ordinary nature, I do not ſee but they may paſs.

But there have been three propoſitions and counſels which have been ſtirred, which ſeem to me of very great importance; wherein I think myſelf bound to deliver to his majeſty my advice and opinion, if they ſhould now come in queſtion.

The firſt is, touching the recuſant magiſtrates of the towns of Ireland, and the commonalties themſelves their electors, what ſhall be done? Which conſultation ariſeth from the late advertiſements of the two lords juſtices, upon the inſtance of the two towns, Limerick and Kilkenny; in which advertiſements they repreſent the danger only, without giving any light for the remedy; rather warily for themſelves, than agreeably to their duties and places.

In this point I humbly pray his majeſty to remember, that the refuſal is not of the oath of allegiance (which is not enacted in Ireland) but of the oath of ſupremacy, which cutteth deeper into matter of conſcience. Alſo, that his

majeſty

majeſty will, out of the depth of his excellent wiſdom and providence, think, and, as it were, calculate with himſelf, whether time will make more for the cauſe of religion in Ireland, and be ſtill more and more propitious; or whether deferring remedies will not make the caſe more difficult. For if time give his majeſty advantage, what needeth precipitation to extreme remedies? But if time will make the caſe more deſperate, then his majeſty cannot begin too ſoon. Now, in my opinion, time will open and facilitate things for reformation of religion there, and not ſhut up or lock out the ſame. For firſt, the plantations going on, and being principally of proteſtants, cannot but mate the other party in time; alſo his majeſty's care in placing good biſhops and divines, in amplifying the college there, and in looking to the education of wards and the like; as they are the moſt natural means, ſo are they like to be the moſt effectual and happy for the weeding out of popery, without uſing the temporal ſword: ſo that, I think, I may truly conclude, that the ripeneſs of time is not yet come.

Therefore my advice in all humbleneſs is, that this hazardous courſe of proceeding, to tender the oath to the magiſtrates of towns, proceed not, but die by degrees. And yet, to preſerve the authority and reputation of the former council, I would have ſomewhat done; which is, that there be a proceeding to ſeizure of liberties; but not by any act of power, but by *Quo warranto*, or *Scire facias*; which is a legal courſe; and will be the work of three or four terms; by which time the matter will ſomewhat cool.

But I would not (in any caſe) that the proceeding ſhould be with both the towns, which ſtand now in contempt, but with one of them only, chuſing that which ſhall be thought moſt fit. For if his majeſty proceed with both, then all the towns that are in the like caſe will think it a common cauſe; and that it is but their caſe to-day, and their own to-morrow. But if his majeſty proceed with one, the apprehenſion and terror will not be ſo ſtrong; for they will think it may be their caſe as well to be ſpared as proſecuted: and this is the beſt advice that I can give to his majeſty in this ſtrait; and of this opinion ſeemed my lord chancellor to be.

The ſecond propoſition is this: it may be his majeſty will be moved to reduce the number of his council of Ireland, which is now almoſt fifty, to twenty, or the like number; in reſpect the greatneſs of the number doth both embaſe the authority of the council, and divulge the buſineſs. Nevertheleſs, I do hold this propoſition to be rather ſpecious and ſolemn, than needful at this time; for certainly, it will fill the ſtate full of diſcontentment; which in a growing and unſettled eſtate ought not to be.

This I could wiſh; that his majeſty would appoint a ſelect number of counſellors there, which might deal in the improvement of his revenue (being a thing not fit to paſs through too many hands) and that the ſaid ſelected number ſhould have days of ſitting by themſelves, at which the reſt of the council ſhould not be preſent; which being once ſettled, then other principal buſineſs of ſtate may be handled at thoſe ſittings, and ſo the reſt begin to be diſuſed, and yet retain their countenance without murmur or diſgrace.

The third propoſition, as it is wound up, ſeemeth to be pretty, if it can keep promiſe; for it is this, that a means may be found to reinforce his majeſty's army there by 500 or 1000 men; and that without any penny increaſe of charge. And the means ſhould be, that there ſhould be a commandment of a local removing, and transferring ſome companies from one province to another; whereupon it is ſuppoſed, that many that are planted in houſe and lands, will rather loſe their entertainment, than remove; and thereby new men may have their pay, and yet the old be mingled in the country for the ſtrength thereof.

In this propoſition two things may be feared: the one, diſcontent of thoſe that ſhall be put off; the other, that the companies ſhall be ſtuffed with *Tirones*, inſtead of *Veterani*. I wiſh therefore that this propoſition be well debated ere it be admitted. Thus having performed that which duty binds me to do, I commend you to God's beſt preſervation.

Your moſt devoted and bounden ſervant,

Gorhambury, July 5, 1616. FR. BACON.

CLI. To the KING.

It may pleaſe your moſt excellent Majeſty,

ACCORDING to your commandment, I ſend incloſed the preface to the patent of creation of Sir George Villiers. I have not uſed any glaring terms, but drawn it according to your majeſty's inſtructions, and the note which thereupon I framed, and your majeſty allowed, with ſome additions which I have inſerted. But I hope your majeſty will be pleaſed to correct and perfect it. Your majeſty will be alſo pleaſed to remember, that, if the creation ſhall be at Roughford, your pleaſure and this draught be ſpeedily returned; for it will aſk a ſending of the bill for your majeſty's ſignature, and a ſending back of the ſame to paſs the ſeals, and a ſending thereupon the patent itſelf: ſo it muſt be twice ſent up and down before the day. God evermore preſerve your majeſty.

Your Majeſty's moſt devoted and moſt bounden ſervant,

28 July 1616. FR. BACON.

CLII. To Sir GEORGE VILLIERS, on ſending his bill for Viſcount.

SIR,

I Send you the bill for his majeſty's ſignature, reformed according to his majeſty's amendments, both in the two places (which, I aſſure you, were both altered with great judgment) and in the third place, which his majeſty termed a queſtion only. But he is an idle body that thinks his majeſty aſks an idle queſtion; and therefore his majeſty's queſtions are to be anſwered, by taking away the cauſe of the queſtion, and not by replying.

For the name, his majeſty's will is a law in thoſe things; and to ſpeak truth, it is a well-ſounding and noble name, both here and abroad; and being your proper name, I will take it for a good ſign that you ſhall give honour to your dignity, and not your dignity to you. Therefore I have made it viſcount Villiers: and for your barony, I will keep it for an earldom; for though the other had been more orderly, yet that is as uſual, and both alike good in law.

For Roper's place [a], I would have it by all means diſpatched: and therefore I marvel it lingereth. It were no good manners to take the buſineſs out of my lord treaſurer's hands; and therefore I purpoſe to write to his lordſhip, if I hear not from him firſt by Mr. Deccomb. But if I hear of any delay, you will give me leave (eſpecially ſince the king named me) to deal with Sir John Roper myſelf; for neither I, nor my lord treaſurer, can deſerve any great thanks of you in this buſineſs; conſidering the king hath ſpoken to Sir John Roper, and he hath promiſed; and beſides, the thing itſelf is ſo reaſonable, as it ought to be as ſoon done as ſaid. I am now gotten into the country to my houſe, where I have ſome little liberty to think of that I would think of, and not of that which other men hourly break my head withal, as it was at London. Upon this you may conclude, that moſt of my thoughts are of his majeſty; and then you cannot be far off. God ever keep you, and proſper you. I reſt always

Your true and moſt devoted ſervant,

Aug. 5. 1616. FR. BACON.

[a] Sir John Roper, who had for many years enjoy'd the place of the *chief clerk for enrolling of pleas in the court of king's bench*, eſteem'd to be worth about 4000 *l. per ann.* being grown old, was prevail'd with to ſurrender it upon being created lord Teynham, with a reſervation of the profits thereof to himſelf during life. Upon which ſurrender Sir George Villiers was to have the office granted to two of his truſtees for their lives, as Carr earl of Somerſet was to have had before. But the lord chief juſtice Coke not being very forward to accept of the ſurrender, or make a new grant of it upon thoſe terms, he was upon the 3d of October 1616, commanded to deſiſt from the ſervice of his place, and at laſt removed from it upon the 15th of November following. His ſucceſſor Sir Henry Montagu, third ſon of Sir Edward Montagu of Boughton in Northamptonſhire, recorder of London, and king's ſerjeant, being more complaiſant, Sir John Roper reſign'd towards the latter end of the ſame month; and Mr. Shute, and Mr. Heath, who was afterwards the king's ſolicitor general, being the deputies and truſtees of Sir George Villiers, were admitted. *Stephens*'s Introduct. p. 37.

CLIII. To Sir GEORGE VILLIERS, on ſending his patent.

SIR,

I Have ſent you now your patent of creation of lord Blechley of Blechley, and of viſcount Villiers. Blechley is your own; and I liked the ſound of the name better than Whaddon; but the name will be hid, for you will be called viſcount Villiers. I have put them both in a patent, after the manner of the patent of arms where baronies are joined: But the chief reaſon was, becauſe I would avoid double prefaces, which had not been fit; nevertheleſs the ceremony of robing, and otherwiſe, muſt be double. And now, becauſe I am in the country, I will ſend you ſome of my country fruits, which with me are good meditations; which, when I am in the city, are choked with buſineſs.

After that the king ſhall have water'd your new dignities with his bounty of the lands which he intends you, and that ſome other things concerning your means, which are now likewiſe in intention, ſhall be ſettled upon you; I do not ſee but you may think your private fortunes eſtabliſhed: and therefore it is now time, that you ſhould refer your actions chiefly to the good of your ſovereign and your country. It is the life of an ox or a beaſt always to eat, and never to exerciſe; but men are born (eſpecially chriſtian men) not to cram in their fortunes, but to exerciſe their virtues; and yet the other have been the unworthy, and ſometimes the unlucky humour of great perſons in our times; neither will your farther fortune be the farther off: For aſſure yourſelf, that fortune is of a woman's nature, that will ſooner follow you by ſlighting than by too much wooing. And in this dedication of yourſelf to the publick, I recommend unto you principally, that which I think was never done ſince I was born; and which not done, hath bred almoſt a wilderneſs and ſolitude in the king's ſervice; which is, that you countenance, and encourage, and advance able and virtuous men in all kinds, degrees, and profeſſions. For in the time of ſome late great counſellors, when they bare the ſway, able men were by deſign and of purpoſe ſuppreſſed; and tho' now ſince choice goeth better both in church and commonwealth, yet money, and turn-ſerving, and cunning canvaſſes, and importunity prevail too much. And in places of moment, rather make able and honeſt men yours, than advance thoſe that are otherwiſe becauſe they are yours. As for cunning and corrupt men, you muſt, I know, ſometimes uſe them, but keep them at a diſtance; and let it appear, that you make uſe of them, rather than that they lead you. Above all, depend wholly (next to God) upon the king; and be ruled (as hitherto you have been) by his inſtructions; for that's beſt for yourſelf. For the king's care and thoughts concerning you are according to the thoughts of a great king; whereas your thoughts concerning yourſelf are, and ought to be, according to the thoughts of a modeſt man. But let me not weary you: the ſum is, that you think goodneſs the beſt part of greatneſs; and that you remember whence your riſing comes, and make return accordingly. God ever keep you.

Your true and moſt devoted ſervant,

Aug. 12, 1616. FR. BACON.

CLIV.

The greateſt truſt between man and man, is the truſt of giving counſel, ſays Sir Fr. Bacon in his *Eſſay of Counſel*, Vol. I. p. 401. of the following letters; which part ſurely no man could diſcharge with greater fidelity and ability than he did, in that excellent diſcourſe printed in Vol. I. Therein Sir Francis doth deſcend into ſo particular a conſideration, how this great favourite ought to govern himſelf in relation to all degrees of men; of the good he might do, and the evils he might prevent; that whoſoever in his circumſtances ſhall obſerve and practiſe thoſe rules, muſt have very hard luck, if he doth not become gracious in the eyes of the people and of the prince. *Stephens.*

CLIV. To the KING, of Sir George Villiers's patent.

It may pleaſe your moſt excellent Majeſty,

I Have ſent Sir George Villiers's patent, drawn again, containing alſo a barony; the name Blechley, which is his own, and to my thinking ſoundeth better than Whaddon. I have included both in one patent, to avoid a double preface, and as hath been uſed in the patents of earls of like nature: nevertheleſs the ceremony of robing and otherwiſe is to be double, as is alſo uſed in like caſe of earls.

It reſteth, that I expreſs unto your majeſty my great joy, in your honouring and advancing this gentleman; whom to deſcribe, not with colours, but with true lines, I may ſay this; your majeſty certainly hath found out and choſen a ſafe nature, a capable man, an honeſt will, generous and noble affections, and a courage well lodged, and one that I know loveth your majeſty unfeignedly, and admireth you as much as is in a man to admire his ſovereign upon earth. Only your majeſty's ſchool (wherein he hath already ſo well profited, as in this entrance upon the ſtage, being the time of greateſt danger, he hath not committed any manifeſt error) will add perfection to your majeſty's comfort and the great contentment of your people. God ever preſerve and proſper your majeſty. I reſt in all humbleneſs,

Your Majeſty's moſt bounden and moſt devoted ſubject and ſervant,

Aug. 12. 1616. FR. BACON.

CLV. To Sir GEORGE VILLIERS, on ſending his patent ſealed.

SIR,

I Took much contentment in that I perceived by your letter, that you took in ſo good part the freedom of my advice, and that yourſelf in your own nature conſented therewith. Certainly no ſervice is comparable to good counſel; and the reaſon is, becauſe no man can do ſo much for another, as a man may do for himſelf: now good counſel helpeth a man to help himſelf: but you have ſo happy a maſter as ſupplieth all. My ſervice and good will ſhall not be wanting.

It was graciouſly and kindly done alſo of his majeſty towards me, to tell you that you were beholden to me: but it muſt be then for thinking of you as I do; for otherwiſe, for ſpeaking as I think, it is but the part of an honeſt man. I ſend you your patent, whereof God give you joy; and I ſend you here incloſed a little note of remembrance for that part of the ceremony which concerneth the patent; for as for other ceremonies, I leave to others.

My lord chancellor diſpatch'd your patent preſently upon the receipt; and writ to me, how glad he was of it, and how well he wiſh'd you. If you writ to him a few words of thanks, I think, you ſhall do well. God keep you and proſper you. I ever reſt

Your true and moſt devoted ſervant,

Aug. 20. 1616. FR. BACON.

CLVI. To Sir GEORGE VILLIERS, acknowledging the King's favour.

SIR,

I Am more and more bound unto his majeſty, who, I think, knowing me to have other ends than ambition, is contented to make me judge of mine own deſires. I am now beating my brains (among many cares of his majeſty's buſineſs) touching the redeeming the time in this buſineſs of cloth. The great queſtion is; how to miſs, or how to mate the Flemings; how to paſs by them, or how to paſs over them.

In my next letter, I ſhall alter your ſtyle: but I ſhall never whilſt I breathe alter mine own ſtyle, in being

Your true and devoted ſervant,

Aug. 22. 1616. FR. BACON.

CLVII. To the KING.

It may pleaſe your moſt excellent Majeſty,

FIRST, from the bottom of my heart I thank the God of all mercy and ſalvation, that he hath preſerved you from receiving any hurt by your fall; and I pray his divine Majeſty ever to preſerve you on horſeback and on foot from hurt and fear of hurt.

Now touching the clothing buſineſs; for that I perceive the cloth goeth not off as it ſhould, and that Wiltſhire is now come in with complaint, as well as Glouceſterſhire and Worceſterſhire, ſo that this gangrene creepeth on; I humbly pray your majeſty to take into your majeſty's princely conſideration a remedy for the preſent ſtand, which certainly will do the deed; and for any thing that I know will be honourable and convenient, tho' join'd with ſome loſs in your majeſty's cuſtoms, which I know in a buſineſs of this quality, and being but for an interim till you may negotiate, your majeſty doth not eſteem: and it is this:

That your majeſty by your proclamation do forbid (after fourteen days, giving that time for ſuiting mens ſelves) the wearing of any ſtuff made wholly of ſilk, without mixture of wool, for the ſpace of ſix months. So your majeſty ſhall ſupply outward vent with inward uſe, ſpecially for the finer cloths, which are thoſe wherein the ſtand principally is, and which ſilk-wearers are likeſt to buy; and you ſhall ſhew a moſt princely care over thouſands of the poor people; and beſides, your majeſty ſhall blow a horn, to let the Flemings know your majeſty will not give over the chace. Again, the winter ſeaſon coming on is fitteſt for wearing of cloth; and there is ſcope enough left for bravery and vanity by lacing and embroidery, ſo it be upon cloth or ſtuffs of wool.

I thought it my duty to offer and ſubmit this remedy, amongſt others, to your majeſty's great wiſdom, becauſe it pleas'd you to lay the care of this buſineſs upon me; and indeed my care did fly to it before, as it ſhall always do to any knots and difficulties in your buſineſs, wherein hitherto I have been not unfortunate. God ever have you in his moſt precious cuſtody.

Your Majeſty's moſt faithful and moſt bounden ſervant,

Sept. 13. 1616. FR. BACON.

CLVIII. To the Lord Viſcount VILLIERS.

My very good Lord,

IT was my opinion from the beginning, that this company will never overcome the buſineſs of the cloth; and that the impediments are as much or more in the perſons which are *inſtrumenta animata,* than in the dead buſineſs itſelf.

I have therefore ſent unto the king here incloſed my reaſons, which I pray your lordſhip to ſhew his majeſty.

The new company and the old company are but the ſons of Adam to me, and I take myſelf to have ſome credit with both; but it is upon fear rather with the old, and upon love rather with the new; and yet with both upon perſuaſion that I underſtand the buſineſs.

Nevertheleſs I walk *in via regia,* which is not abſolutely acceptable to either: for the new company would have all their demands granted, and the old company would have the king's work given over and deſerted.

My

My opinion is, that the old company be drawn to ſucceed into the contract (elſe the king's honour ſuffereth) and that we all draw in one way to effect that. If time, which is the wiſeſt of things, prove the work impoſſible or inconvenient, which I do not yet believe, I know his majeſty and the ſtate will not ſuffer them to periſh.

I wiſh what ſhall be done were done with reſolution and ſpeed, and that your lordſhip (becauſe it is a gracious buſineſs) had thanks of it next the king; and that there were ſome commiſſion under his majeſty's ſign manual to deal with ſome ſelected perſons of the old company, and to take their anſwers and conſent under their hands; and that the procuring the commiſſion, and the procuring of their offers to be accepted, were your lordſhip's work.

In this treaty my lord chancellor muſt by no means be left out; for he will moderate well, and aimeth at his majeſty's ends.

Mr. Solicitor is not yet returned, but I look for him preſently. I reſt,

Your Lordſhip's true and moſt devoted ſervant,

Monday, October 14, at 10 of the clock.

FR. BACON.

CLIX. Reaſons why the new company is not to be truſted and continued with the trade of cloths.

FIRST, The company conſiſts of a number of young men and ſhop-keepers, which not being bred in the trade, are fearful to meddle with any of the dear and fine cloths, but only meddle with the coarſe cloths, which is every man's ſkill; and beſides, having other trades to live upon, they come in the ſunſhine ſo long as things go well, and as ſoon as they meet with any ſtorm or cloud, they leave trade, and go back to ſhop-keeping: whereas the old company were beaten traders, and having no other means of living but that trade, were fain to ride out all accidents and difficulties, which (being men of great ability) they were well able to do.

Secondly, Theſe young men being the major part, and having a kind of dependance upon alderman Cockain, they carry things by plurality of voices; and yet thoſe few of the old company, which are amongſt them, do drive almoſt three parts of the trade: and it is impoſſible things ſhould go well, where one part gives the vote, and the other doth the work; ſo that the execution of all things lies chiefly upon them that never conſented, which is merely *motus violentus*, and cannot laſt.

Thirdly, The new company make continually ſuch new ſpringing demands, as the ſtate can never be ſecure nor truſt to them; neither doth it ſeem that they do much truſt themſelves.

Fourthly, The preſent ſtand of cloth at Blackwell-hall (which is that that preſſeth the ſtate moſt, and is provided for but by a temporary and weak remedy) is ſuppoſed would be preſently at an end, upon the revivor of the old; in reſpect that they are able men and united amongſt themſelves.

Fifthly, In theſe caſes *opinio eſt veritate major*, and the very voice and expectation of revivor of the old company will comfort the clothiers, and encourage them not to lay down their looms.

Sixthly, The very Flemings themſelves (in regard of the pique they have againſt the new company) are like to be more pliant and tractable towards his majeſty's ends and deſires.

Seventhly, Conſidering the buſineſs hath not gone on well, his majeſty muſt either lay the fault upon the matter itſelf, or upon the perſons that have managed it; wherein the king ſhall beſt acquit his honour, to lay it where it is indeed; that is, upon the carriage and proceedings of the new company, which have been full of uncertainty and abuſe.

Laſtly, The ſubjects of this kingdom generally have an ill taſte and conceit of the new company, and therefore the putting of them down will diſcharge the ſtate of a great deal of envy.

CLX. To the Lord Viſcount VILLIERS.

My very good Lord,

NOW that the king hath received my opinion, with the judges opinion, unto whom it was referred, touching the propoſition for inns, in point of law; it reſteth that it be moulded and carried in that ſort, as it may paſs with beſt contentment and conveniency. Wherein I that ever love good company, as I was joined with others in the legal point, ſo I deſire not to be alone in the direction touching the conveniency. And therefore I ſend your lordſhip a form of warrant for the king's ſignature, whereby the framing of the buſineſs, and that which belongeth to it, may be referred to myſelf with ſerjeant Montague and ſerjeant Finch; and tho' Montague ſhould change his place, that alteration hurteth not the buſineſs, but rather helpeth it. And becauſe the inquiry and ſurvey touching inns will require much attendance and charge, and the making of the licences, I ſhall think fit (when that queſtion cometh to me) to be † to the juſtice of aſſiſe, and not to thoſe that follow this buſineſs: therefore his majeſty may be pleaſed to conſider what proportion or dividend ſhall be allotted to Mr. Mompeſſon, and thoſe that ſhall follow it at their own charge, which uſeth in like caſes to be a fifth [a]. So I ever reſt,

† Here (referred) or ſome word of the like import is omitted.

Your Lordſhip's true and moſt devoted ſervant,

Nov. 13. 1616. FR. BACON.

[a] I ſuppoſe after the judges and attorney-general had given the opinion above-mentioned, that a patent was ſoon granted, for licenſing of common inns; whence Sir Giles Mompeſſon levied ſeveral ſums by fines, and annual rent, and from ale-houſes alſo by a ſubſequent patent: proceeding therein with ſo much rigour, that it was complained of in the parliament which began in $16\frac{20}{21}$, as one of the great grievances of the nation; the patent declared illegal, and recalled by the king's proclamation; Mompeſſon and Michel the chief projectors of this and ſome other oppreſſions, ſeverely cenſured according to their demerits: the manner of which may be ſeen in the journals of that parliament, and the hiſtories of thoſe times. *Stephens.*

CLXI. To the Lord Viſcount VILLIERS.

My very good Lord,

I Think his majeſty was not only well adviſed, but well inſpired, to give order for this ſame wicked child of Cain, Bertram, to be examined before he was farther proceeded with. And I for my part, before I had received his majeſty's pleaſure by my lord chamberlain, went thus far; that I had appointed him to be farther examined, and alſo had taken order with Mr. Solicitor that he ſhould be provided to make ſome declaration at his trial in ſome ſolemn faſhion, and not to let ſuch a ſtrange murder paſs, as if it had been but a horſe-ſtealing.

But upon his majeſty's pleaſure ſignified, I forthwith cauſed the trial to be ſtaid, and examined the party according to his majeſty's queſtions; and alſo ſent for the principal counſel in the cauſe, whereupon Sir John Tyndal's report was grounded, to diſcern the juſtice or iniquity of the ſaid report, as his majeſty likewiſe commanded.

I ſend therefore the caſe of Bertram truly ſtated and collected, and the examination taken before myſelf and Mr. Solicitor; whereby it will appear to his majeſty that Sir John Tyndal (as to this cauſe) is a kind of a martyr: for if ever he made a juſt report in his life, this was it.

But the event ſince all this is, that this Bertram being, as it ſeemeth, indurate or in deſpair, hath hanged himſelf in priſon; of which accident, as I am ſorry, becauſe he is taken from example and publick juſtice, ſo yet I would not for any thing it had been before his examination; ſo that there may be otherwiſe ſome occaſion taken, either by ſome declaration in the king's bench upon the return of the coroner's inqueſt, or by ſome printed book of the fact, or by ſome other means (whereof I purpoſe to adviſe with my lord chancellor) to have

both his majesty's royal care, and the truth of the fact, with the circumstances, manifested and published *.

For the taking a toy of my lord chief justice before he was placed, it was done before your letter came; and on Tuesday Heath and Shute shall be admitted and all perfected.

My lord chancellor purposeth to be at the hall to-morrow, to give my lord chief justice his oath; and I pray God it hurt him not this cold weather. God ever prosper you.

Your true and most devoted servant,

Sunday night, Nov. 17. 1616. FR. BACON.

* This Bertram, who, according to Camden in his annals of king James, was a grave man of above 70 years of age, and of a clear reputation, pistolled Sir John Tyndal, a master in chancery, on the 12th of November, for making a report against him, in a cause where the sum contended for did not exceed 200 *l.* By his examination taken the 16th, he confessed it to be as foul a murther as ever was; under the sense of which he hanged himself the next day. *Stephens.*

CLXII. To Sir FRANCIS BACON, his Majesty's Attorney-General.

SIR,

I Have acquainted his majesty with your letter, and the other papers inclosed, who liketh very well of the course you purpose touching the manifest to be published of Bertram's fact: and will have you, according to your own motion, advise with my lord chancellor of the manner of it. His majesty's pleasure likewise is, that according to the declaration he made before the lords of his council at Whitehall, touching the review of my lord Coke's *Reports*, you draw a warrant ready for his signature, directed to those judges whom he then named to that effect, and send it speedily to him to be signed, that there may be a dispatch of that business before the end of this term. And so I rest,

Your faithful friend at command,

Newmarket, Nov. 19, 1616. GEORGE VILLIERS.

The Case of John Bertram.

LEonard Chamberlayne died intestate without issue, and left a sister married to Bertram, and a niece afterwards married to Sir George Simeon.

The niece obtained letters of administration, and did administer; but afterwards upon appeal, Bertram in the right of his wife (that was the sister) obtained the former administration to be repealed, and new letters of administration to be committed to Bertram and his wife, because the sister was nearer of kin than the niece.

Thereupon Bertram brings his bill in chancery against the first administratrix, to discover the true state of the intestate, and to have it set over unto him, being the rightful administrator; and this cause coming to hearing, it did appear that there was a debt of 200 *l.* owing by one Harris to the intestate: whereupon it was decreed, that the debt of Harris by bond should be set over to Bertram, and likewise that all other moneys, debts, and bonds, should be assigned over to him. In the penning of this decree there was an error or slip; for it was penned that a debt by Harris by a bond of 200 *l.* should be set over, whereas the proofs went plainly that it was but 200 *l. in toto* upon divers specialties and writings. Upon this pinch and advantage Bertram moved still that the bond of 200 *l.* should be brought in, and at last the defendant alledging that there was no such bond, the court ordered that the money itself, *viz.* 200 *l.* should be brought in; which was done accordingly, and soon after by order of the court it was paid over to Bertram.

When Bertram had this 200 *l.* in his purse, he would needs surmise, that there was another 200 *l.* due by Harris upon accompt besides the 200 *l.* due by one singular bond, and still pressed the words of the decree, which mentions a

bond, and thereupon got his adverſary Sir George Simeon committed. Afterwards it was moved upon Simeon's part, that there was only one debt of 200*l.* and that the decree was miſtaken in the penning of it, and ſo muſt needs be underſtood, becauſe the decree muſt be upon the proofs, and all the proofs went but upon the 200*l. in toto*, and not upon any particular bond: whereupon my lord chancellor referred the conſideration of the proofs, and the comparing of them with the decree, to Sir John Tyndal and doctor Amye.

They reported (which was the killing report) that upon the proofs there was but one 200*l.* in all, and that had been eagerly followed by Bertram, and that Simeon had ſuffered by error and miſtaking, and that it were time he were releaſed (which was a moſt juſt and true report) and yet it concluded (as is uſed in ſuch caſes) that they referred it to the better judgment of the court; and the court upon the reading of that report gave order that the plaintiff Bertram ſhould ſhew cauſe by a day why Simeon ſhould not be enlarged, and the plaintiff Bertram diſmiſſed. And before the day prefixed to ſhew cauſe, Bertram piſtolled Sir John Tyndal.

CLXIII. To the Lord Viſcount Villiers.

My very good Lord,

I Am glad to find your lordſhip mindful of your own buſineſs, and if any man put you in mind of it, I do not diſlike that neither; but your lordſhip may aſſure yourſelf, in whatſoever you commit to me your lordſhip's farther care ſhall be needleſs: for I deſire to take nothing from my maſter and my friend but care; and therein I am ſo covetous, as I will leave them as little as may be.

Now therefore things are grown to a concluſion, touching your land and office, I will give your lordſhip an account of that which is paſſed; and acquaint your judgment (which I know to be great and capable of any thing) with your own buſineſs; that you may diſcern the difference between doing things ſubſtantially, and between ſhuffling and talking: and firſt for your patent.

Firſt, It was my counſel and care that your book ſhould be fee-farm, and not fee-ſimple; whereby the rent of the crown in ſucceſſion is not diminiſhed, and yet the quantity of the land, which you have upon your value, is enlarged; whereby you have both honour and profit.

Secondly, By the help of Sir Lyonel Cranfield I advanced the value of Sherbourn from 26000*l.* (which was thought and admitted by my lord treaſurer and Sir John Deccombe, as a value of great favour to your lordſhip, becauſe it was a thouſand pound more than it was valued at to Somerſet) to thirty two thouſand pounds; whereby there was ſix thouſand pounds gotten, and yet juſtly.

Thirdly, I adviſed the courſe of rating Hartington at a hundred years purchaſe, and the reſt at thirty-five years purchaſe fee-farm, to be ſet down and expreſſed in the warrant; that it may appear and remain of record, that your lordſhip had no other rates made to you in favour, than ſuch as purchaſers upon ſale are ſeldom drawn unto; whereby you have honour.

Fourthly, That leaſe to the feoffees, which was kept as a ſecret in the decke (and was not only of Hartington, but alſo of moſt of the other particulars in your book) I cauſed to be throughly looked into and provided for; without which your aſſurance had been nothing worth: and yet I handled it ſo, and made the matter ſo well underſtood, as you were not put to be a ſuitor to the prince for his good-will in it, as others ignorantly thought you muſt have done.

Fifthly, The annexation[a], (which no body dreamt of, and which ſome idle bold lawyer would perhaps have ſaid had been needleſs; and yet is of that weight, that there was never yet any man that would purchaſe any ſuch land from

[a] The annexation, by which lands, *etc.* were united or annexed to the duchies of Cornwall and Lancaſter.

from the king, except he had a declaration to diſcharge it) I was provident to have it diſcharged by declaration.

Sixthly, Leſt it ſhould be ſaid that your lordſhip was the firſt (except the queen and the prince) that brake the annexation, upon a mere gift; for that others had it diſcharged only upon ſale, which was for the king's profit and neceſſity; I found a remedy for that alſo, becauſe I have carved it in the declaration, as that this was not gift to your lordſhip, but rather a purchaſe and exchange (as indeed it was) for Sherbourn.

Seventhly and laſtly, I have taken order (as much as in me was) that your lordſhip in theſe things which you have paſſed be not abuſed, if you part with them; for I have taken notes in a book of their values and former offers.

Now for your office.

Firſt, Whereas my lord Teynham, at the firſt, would have had your lordſhip have had but one life in it, and he another, and my lord treaſurer, and the ſolicitor, and Deccombe, were about to give way to it; I turned utterly that courſe, telling them that you were to have two lives in it, as well as Somerſet had.

Secondly, I have accordingly, in the aſſurance from your deputies, made them acknowledge the truſt, and give ſecurity not only for your lordſhip's time, but after; ſo as you may diſpoſe (if you ſhould die, which I would be ſorry to live to) the profits of the office by your will, or otherwiſe, to any of your friends for their comfort and advancement.

Thirdly, I dealt ſo with Whitlocke as well as Heath, as there was no difficulty made of the ſurrender.

Laſtly, I did caſt with myſelf, that if your lordſhip's deputies had come in by Sir Edward Coke, who was tyed to Somerſet, it would have been ſubject to ſome clamour from Somerſet, and ſome queſtion what was forfeited by Somerſet's attainder (being but of felony) to the king; but now they coming in from a new chief juſtice, all is without queſtion or ſcruple.

Thus your lordſhip may ſee my love and care towards you, which I think infinitely too little in reſpect of the fulneſs of my mind; but I thought good to write this, to make you underſtand better the ſtate of your own buſineſs; doing by you as I do by the king; which is, to do his buſineſs ſafely and with foreſight, not only of to-morrow or next day, but afar off[a]; and not to come fiddling with a report to him what is done every day, but to give him up a good ſum in the end.

I purpoſe to ſend your lordſhip a kalendar fair written of thoſe evidences which concern your eſtate, for ſo much as have paſſed my hands; which in truth are not fit to remain with ſolicitors, no nor with friends, but in ſome great cabinet to be made for that purpoſe.

All this while I muſt ſay plainly to your lordſhip, that you fall ſhort for your preſent charge, except you play the good huſband; for the office of Teynham is in reverſion, Darcy's land is in reverſion; all the land in your books is but in reverſion, and yields you no preſent profit, becauſe you pay the fee-farm. So as you are a ſtrange heteroclite in grammar, for you want the preſent tenſe; many verbs want the præterperfect tenſe, and ſome the future tenſe, but none want the preſent tenſe. I will hereafter write to your lordſhip, what I think of for that ſupply; to the end that you may, as you have begun to your great honour, deſpiſe money, where it croſſeth reaſon of ſtate or virtue. But I will trouble you no farther at this time. God ever preſerve and proſper your lordſhip.

Your true and moſt devoted ſervant,

Nov. 29. 1616. FR. BACON.

CLXIV.

[a] Certainly the wiſdom of foreſight and prevention, is far above the wiſdom of remedy; and yet I fear the following obſervation Sir Francis Bacon makes in his eſſay of empire, concerning the times in or near which he lived, hath been verified too much in others. 'This is true, that the wiſdom of all theſe later "times in princes affairs, is rather fine deliveries and ſhiftings of dangers and miſchiefs when they are near, "than ſolid or grounded courſes to keep them aloof. But this is but to try maſteries with fortune; and let men "beware how they neglect and ſuffer matter of trouble to be prepared; for no man can forbid the ſpark, nor "tell whence it may come." Vol. I. p. 400.

CLXIV. To the Lord Viſcount VILLIERS, about duels.

My very good Lord,

I Delivered the proclamation for cloth to ſecretary Winwood on Saturday, but he keepeth it to carry it down himſelf, and goeth down, as I take it, to-day. His majeſty may perceive by the docket of the proclamation, that I do not only ſtudy, but act that point touching the judges, which his majeſty commandeth in your laſt.

Yeſterday was a day of great good for his majeſty's ſervice, and the peace of this kingdom concerning duels, by occaſion of Darcy's caſe. I ſpake big, and, publiſhing his majeſty's ſtrait charge to me, ſaid, it had ſtruck me blind, as in point of duels and cartels, etc. I ſhould not know a coronet from a hatband. I was bold alſo to declare how excellently his majeſty had expreſſed to me a contemplation of his touching duels; that is, that when he came forth and ſaw himſelf princely attended with goodly nobleſs and gentlemen, he entered into the thought, that none of their lives were in certainty not for twenty four hours from the duel; for it was but a heat or a miſtaking, and then a lye, and then a challenge, and then life: ſaying, that I did not marvel, ſeeing Xerxes ſhed tears, to think none of his great army ſhould be alive once within a hundred years, his majeſty were touched with compaſſion to think that not one of his attendance but might be dead within twenty four hours by the duel. This I write becauſe his majeſty may be wary, what he ſaith to me (in things of this nature) I being ſo apt to play the blab. In this alſo I forgot not to prepare the judges, and wiſh them to profeſs, and as it were to denounce, that in all caſes of duel capital before them, they will uſe equal ſeverity towards the inſolent murder by the duel, and the inſidious murder; and that they will extirpate that difference out of the opinions of men; which they did excellent well.

I muſt alſo ſay, that it was the firſt time that I heard my lord of Arundel ſpeak in that place; and I do aſſure your lordſhip he doth excellently become the court; he ſpeaketh wiſely and weightily, and yet eaſily and clearly, as a great nobleman ſhould do *.

There hath been a proceeding in the king's bench againſt Bertram's keeper, for miſdemeanor, and I have put a little pamphlet (prettily penn'd by one Mr. Trotte, that I ſet on work, touching the whole buſineſs) to the preſs by my lord chancellor's advice.

I pray God direct his majeſty in the cloth buſineſs, that that thorn may be once out of our ſides. His majeſty knoweth my opinion *ab antiquo*. Thanks be to God for your health, and long may you live to do us all good. I reſt,

Your true and moſt devoted ſervant,

FR. BACON.

CLXV.

* My lord of Arundel deſcended from the noble family of the Howards; his grandfather the duke of Norfolk loſing his life upon the account of Mary Queen of the Scots, and his father ſuffering ſome years imprisonment under ſentence of condemnation; he was reſtored in blood, and to the titles of Arundel and Surry, 1 Jac. made a privy councillor on the 25th of July 1616, and afterwards earl marſhal of England, and general of the army ſent againſt the Scots by K. Charles I. But about the beginning of our civil wars he retired into Italy, where he had ſpent part of his youth, and returned to the religion he had profeſſed, dying at Padua in 1646. He was a gentleman of a noble aſpect, and of a noble nature, a great virtuoſo and antiquary, who with much care and coſt procured many valuable antiquities and inſcriptions to be brought from Aſia, Greece, and Italy into England, and placed them in or near his garden at Arundel houſe in the Strand; ſeveral of which were very generouſly preſented by his grandſon the duke of Norfolk to the univerſity of Oxford, where they are among others of the famous Selden fixed to the walls encloſing the theatre. It were to be wiſhed, that the great number of ancient ſtatues which adorned his houſe and gardens, and have ſince been much neglected, had met with as ſafe a repoſitory. The eloquence which Sir Francis Bacon doth here commend in this lord, is much the ſame which in the beginning of his *Advancement of learning* he doth attribute to the king, in the words of Tacitus, concerning Auguſtus Caeſar; *Auguſto proſluens, et quae principem deceret, eloquentia fuit.*

CLXV. To the Lord Viſcount VILLIERS.

It may pleaſe your Lordſhip,

I Pray let his majeſty underſtand, that although my lord chancellor's anſwer touching the diſmiſſion of the Farmers cauſe, was full of reſpect and duty, yet I would be glad to avoid an expreſs ſignification from his majeſty, if his majeſty may otherwiſe have his end. And therefore I have thought of a courſe, that a motion be made in open court, and that thereupon my lord move a compromiſe to ſome to be named on either part, with bond to ſtand to their award. And as I find this to be agreeable to my lord chancellor's diſpoſition, ſo I do not find but the Farmers and the other party are willing enough towards it. And therefore his majeſty may be pleaſed to forbear any other letter or meſſage touching that buſineſs. God ever keep your lordſhip.

Your Lordſhip's true and moſt devoted ſervant,

Jan. 23. 1616. FR. BACON.

CLXVI. This letter was written to the Earl of BUCKINGHAM, on the ſame day Sir Francis Bacon was declared Lord Keeper of the Great Seal.

My deareſt Lord,

IT is both in cares and kindneſs, that ſmall ones float up to the tongue, and great ones ſink down into the heart in ſilence. Therefore I could ſpeak little to your lordſhip to-day, neither had I fit time: but I muſt profeſs thus much, that in this day's work you are the trueſt and perfecteſt mirror and example of firm and generous friendſhip that ever was in court. And I ſhall count every day loſt, wherein I ſhall not either ſtudy your well-doing in thought, or do your name honour in ſpeech, or perform you ſervice in deed. Good my lord, account and accept me

Your moſt bounden and devoted friend and ſervant of all men living,

March 7. 1616. FR. BACON, *C. S.*

CLXVII. To the Earl of BUCKINGHAM.

My ſingular good Lord,

WHEN I heard here your lordſhip was dead, I thought I had lived too long. That was (to tell your lordſhip truly) the ſtate of my mind upon that report. Since, I hear it was an idle miſtaking of my lord Evers for my lord Villiers. God's name be bleſſed, that you are alive to do infinite good, and not ſo much as ſick or ill diſpoſed for any thing I now hear.

I have reſigned the prince's ſeal, and my lord Hobart is placed. I made the prince laugh, when I told him I reſigned it with more comfort than I received it; he underſtanding me that I had changed for a better: but after I had given him that thought, I turned it upon this, that I left his ſtate and buſineſs in good caſe, whereof I gave him a particular account.

The queen calleth upon me for the matter of her houſe, wherein your lordſhip and my lord chamberlain and I dealt, and received his majeſty's direction, ſo that I ſhall prepare a warrant firſt to my lord treaſurer and Mr. Chancellor (for that is the right way) to adviſe how to ſettle it by aſſignment, in caſe ſhe ſurvive his majeſty, which I hope in God ſhe ſhall not.

Her deſire was expreſsly and of herſelf, that when I had prepared a warrant to be ſent to his majeſty, I ſhould ſend it by your lordſhip's hands.

We ſit in council, that is all I can yet ſay; Sir John Denham is not come, upon whoſe coming the king ſhall have account of our conſultations touching

Ireland, which we cannot conclude, till we have ſpoken with him; God ever preſerve and proſper you.

It grieveth me much that I cannot hear enough of his majeſty's good diſpoſition of health, and his pleaſures, and other ordinary occurrences of his journey. I pray your lordſhip will direct Mr. Packer to write to me ſome time of matters of that kind; I have made the like requeſt to Sir Edward Villiers, by whom I write this preſent, to whoſe good affection I think myſelf beholden, as I do alſo eſteem him much for his good parts, beſides his nearneſs to your lordſhip, which bindeth me above all.

Your Lordſhip's moſt faithful and devoted friend and ſervant,

7 Apr. 1617. FR. BACON, *C. S.*

CLXVIII. To the renowned Univerſity of CAMBRIDGE, his dear and reverend Mother.

I Am debtor to you of your letters, and of the time likewiſe, that I have taken to anſwer them. But as ſoon as I could chuſe what to think on, I thought good to let you know; that although you may err much in your valuation of me, yet you ſhall not be deceived in your aſſurance: and for the other part alſo, though the manner be to mend the picture by the life; yet I would be glad to mend the life by the picture, and to become, and be, as you expreſs me to be. Your gratulations ſhall be no more welcome to me, than your buſineſs or occaſions; which I will attend; and yet not ſo, but that I ſhall endeavour to prevent them by my care of your good. And ſo I commend you to God's goodneſs.

Your moſt loving and aſſured friend and ſon,

Gorhambury, Apr. 12. 1617. FR. BACON, *C. S.*

CLXIX. To the Earl of BUCKINGHAM.

My ſingular good Lord,

I Am now for five or ſix days retired to my houſe in the country: for I think all my lords are willing to do as ſcholars do, who though they call them holy-days, yet they mean them play-days.

We purpoſe to meet again on Eaſter-Monday, and go all to the ſpital ſermon for that day, and therein to revive the ancient religious manner, when all the council uſed to attend thoſe ſermons, which ſome neglect in queen Elizabeth's time, and his majeſty's great devotion in the due hearing of ſermons himſelf with his council at the court, brought into deſuetude. But now our attendance upon his majeſty, by reaſon of his abſence, cannot be, it is not amiſs to revive.

I perceive by a letter your lordſhip did write ſome days ſince to my lord Brackley, that your lordſhip would have the king ſatisfied by precedents, that letters patents might be of the dignity of an earldom without delivery of the patent by the king's own hand, or without the ordinary ſolemnities of a creation. I find precedents ſomewhat tending to the ſame purpoſe, yet not matching fully. But howſoever let me, according to my faithful and free manner of dealing with your lordſhip, ſay to you, that ſince the king means it, I would not have your lordſhip, for the ſatisfying a little trembling or panting of the heart in my lord or lady Brackley, to expoſe your lordſhip's ſelf, or myſelf (whoſe opinion would be thought to be relied upon) or the king our maſter, to envy with the nobility of this realm; as to have theſe ceremonies of honour diſpenſed with, which in conferring honour have uſed to be obſerved, like a kind of *doctor Bullatus* without the ceremony of a commencement: the king and you know I am not ceremonious in nature, and

therefore

therefore you may think (if it pleaſe you) I do it in judgment. God ever preſerve you.

Your Lordſhip's moſt faithful and devoted friend and ſervant,

FR. BACON, *C. S.*

I purpoſe to ſend the precedents themſelves by my lord of Brackley; but I thought fit to give you ſome taſte of my opinion before.

Gorhambury, Apr. 13. 1617.

CLXX. To the Earl of BUCKINGHAM.

My ſingular good Lord,

I Pray your lordſhip to deliver to his majeſty the incloſed.

I ſend your lordſhip alſo the warrant to my lord treaſurer and Mr. Chancellor of the exchequer for the queen's † houſe: it is to come again to the king, when the bill is drawn for the letters patents; for this is only the warrant to be ſigned by his majeſty.

† Somerſet-Houſe.

I aſked the queen, whether ſhe would write to your lordſhip about it; her anſwer was very modeſt and diſcreet, that becauſe it proceeded wholly from his majeſty's kindneſs and goodneſs, who had referred it, it was not ſo fit for her to write to your lordſhip for the diſpatch of it, but ſhe deſired me to thank your lordſhip for your former care of it, and to deſire you to continue it: and withal ſhe deſireth your lordſhip not to preſs his majeſty in it, but to take his beſt times. This anſwer (becauſe I like it ſo well) I write to you at large; for other matters I will write by the next. God ever proſper you and preſerve you.

Your Lordſhip's moſt faithful and devoted friend and ſervant,

London, 19 Apr. 1617. FR. BACON, *C. S.*

CLXXI. To Mr. MATTHEWS, in reflection upon ſome aſtronomers in Italy.

SIR,

I Write to you chiefly now, to the end, that by the continuance of my acquaintance with you by letters, you may perceive how much I deſire, and how much I do not deſpair of the recontinuance of our acquaintance by converſation. In the mean time, I wiſh you would deſire the aſtronomers of Italy to amuſe us leſs than they do with their fabulous and fooliſh traditions, and come nearer to the experiments of ſenſe; and tell us, that when all the planets, except the moon, are beyond the line in the other hemiſphere for ſix months together, we muſt needs have a cold winter, as we ſaw it was the laſt year. For underſtanding that this was general over all theſe parts of the world; and finding that it was cold weather with all winds, and namely weſt-wind, I imagined there was ſome higher cauſe of this effect; tho' yet I confeſs I thought not that ever I ſhould have found that cauſe ſo palpable a one as it proved; which yet, when I came quickly afterwards to obſerve, I found alſo very clearly, that the ſummer muſt needs be cold too; tho' yet it were generally thought, that the year would make a ſhift to pay itſelf, and that we ſhould be ſure to have heats for our cold. You ſee, that tho' I be full of buſineſs, yet I can be glad rather to lay it all aſide, than to ſay nothing to you. But I long much more to be ſpeaking often with you, and I hope I ſhall not long want my wiſh.

CLXXII. To the KING, about the Spaniſh match.

It may pleaſe your moſt excellent Majeſty,

MR. Vice-Chamberlain hath acquainted myſelf and the reſt of the commiſſioners for the marriage with Spain, which are here, with your Majeſty's inſtructions, ſigned by your royal hands, touching that point of the ſuppreſſing of pirates, as it hath relation to his negotiation; whereupon we met yeſterday at my lord admiral's at Chelſea, becauſe we were loth to draw my lord into the air, being but newly upon his recovery *.

We conceive the parts of the buſineſs are four: the charge; the confederations, and who ſhall be ſolicited or retain'd to come in; the forces and the diſtributions of them; and the enterprize. We had only at this time conference amongſt ourſelves, and ſhall appoint (after the holy-days) times for the calling before us ſuch as are fit, and thereupon perform all the parts of your royal commandments.

In this conference I met with ſomewhat which I muſt confeſs was altogether new to me, and open'd but darkly neither; whereof I think Mr. Vice-Chamberlain will give your Majeſty ſome light, for ſo we wiſhed. By occaſion whereof I hold it my duty, in reſpect of the great place wherein your Majeſty hath ſet me (being only made worthy by your grace) which maketh it decent for me to counſel you *ad ſummas rerum*, to intimate or repreſent to your Majeſty thus much.

I do foreſee, in my ſimple judgment, much inconvenience to inſue, if your Majeſty proceed to this treaty with Spain, and that your council draw not all one way. I ſaw the bitter fruits of a divided council the laſt parliament; I ſaw no very pleaſant fruits thereof in the matter of the cloth. This will be of equal, if not more inconvenience; for whereſoever the opinion of your people is material (as in many caſes it is not) there, if your council be united, they ſhall be able almoſt to give law to opinion and rumour; but if they be divided, the infuſion will not be according to the ſtrength and virtue of the votes of your council, but according to the aptneſs and inclination of the popular. This I leave to your Majeſty in your high wiſdom to remedy: only I could wiſh that when Sir John Digby's inſtructions are perfected, and that he is ready to go, your Majeſty would be pleaſed to write ſome formal letter to the body of your council (if it ſhall be in your abſence) ſignifying to them your reſolution in general, to the end, that when deliberation ſhall be turned into reſolution, no man, howſoever he may retain the inwardneſs of his opinion, may be active *in contrarium*.

The letters of my lords of the council with your Majeſty, touching the affairs of Ireland, written largely and articulately, and by your Majeſty's direction, will much facilitate our labours here; though there will not want matter of conſultation thereupon. God ever preſerve your Majeſty ſafe and happy.

Your Majeſty's moſt devoted and obliged ſervant,

London, April 19. 1617. FR. BACON, *C. S.*

* Charles lord Howard of Effingham and earl of Nottingham, was, as Sir Robert Naunton obſerves, as goodly a gentleman for perſon as the times had any; which is confirmed by Mr. Oſbourn, although his eyes met not with him, till he was turned towards the point of eighty. He being alſo brave, faithful, and diligent, commanded the fleet as lord high admiral upon ſeveral occaſions, particularly againſt the Spaniſh Armado 1588. But in the latter end of the year 1618, he ſurrendered this honourable place to the king (who conferred it upon the marquis of Buckingham) and died in the year 1624, and of his age the 88th. *Stephens.*

CLXXIII. To the Earl of BUCKINGHAM.

My ſingular good Lord,

I Send your lordſhip, according to the direction of your letter, a note of the precedents that I find in my lord Brackley's buſineſs; which do rather come near the caſe than match it. Your lordſhip knoweth already my opi-

nion, that I would rather have you conſtant in the matter, than inſtant for the time.

I ſend alſo incloſed an account of council buſineſs by way of remembrance to his majeſty, which it may pleaſe you to deliver to him.

The queen returneth her thanks to your lordſhip, for the diſpatch of the warrant, touching her houſe: I have not yet acquainted the lord treaſurer, and chancellor of the exchequer with it; but I purpoſe to-morrow to deliver them the warrant, and to adviſe with them for the executing the ſame.

I have received the king's letter with another from your lordſhip, touching the cauſe of the officers, and Sir Arthur Ingram, whereof I will be very careful to do them juſtice.

Yeſterday I took my place in chancery, which I hold only from the king's grace and favour, and your conſtant friendſhip. There was much ado, and a great deal of world: but this matter of pomp, which is heaven to ſome men, is hell to me, or purgatory at leaſt. It is true, I was glad to ſee that the king's choice was ſo generally approved; and that I had ſo much intereſt in mens good wills and good opinions, becauſe it maketh me the fitter inſtrument to do my maſter ſervice, and my friend alſo.

† See page 228. of this Vol.

After I was ſet in chancery, I publiſhed his majeſty's charge which he gave me when he gave me the ſeal; and what rules and reſolutions I had taken for the fulfilling his commandments. I ſend your lordſhip a † copy of that I ſaid. My lord Hay coming to take his leave of me two days before, I told him what I was meditating, and he deſired me to ſend him ſome remembrance of it; and ſo I could not but ſend him another copy thereof. Men tell me it hath done the king a great deal of honour; inſomuch that ſome of my friends that are wiſe men, and no vain ones, did not ſtick to ſay to me, that there was not theſe ſeven years ſuch a preparation for a parliament; which was a commendation, I confeſs, pleaſed me well. I pray take ſome fit time to ſhew it his majeſty, becauſe if I miſunderſtood him in any thing, I may amend it, becauſe I know his judgment is higher and deeper than mine.

I take infinite contentment to hear his majeſty is in great good health and vigor; I pray God preſerve and continue it. Thus wiſhing you well above all men living, next my maſter and his: I reſt,

Your true and devoted friend and ſervant,

FR. BACON, *C. S.*

Dorſet-houſe, which putteth me in mind to thank your lordſhip, for your care of me touching York-houſe, May 8. 1617.

CLXXIV. An account of council buſineſs, and of other matters committed to me by his MAJESTY.

FIRST, for May-day; at which time there was great apprehenſion of tumult by prentices and looſe people; there was never ſuch a ſtill. The remedies that did the effect were three:

Firſt, The putting in muſter of the trained bands and military bands in a brave faſhion that way. Next, the laying a ſtrait charge upon the mayor and aldermen for the city, and juſtices of the peace for the ſuburbs, that the prentices and others might go abroad with their flags and other gauderies, but without weapon of ſhot and pike, as they formerly took liberty to do: which charge was exceeding well performed and obeyed. And the laſt was, that we had, according to our warrant dormant, ſtrengthen'd our commiſſions of the peace in London and Middleſex, with new clauſes of lieutenancy; which as ſoon as as it was known abroad, all was quiet by the terror it wrought. This I write, becauſe it maketh good my farther aſſurance I gave his majeſty at his firſt removes, that all ſhould be quiet; for which I received his thanks.

For the Iriſh affairs, I received this day his majeſty's letter to the lords, which we have not yet opened, but ſhall ſit upon them this afternoon. I do not forget, beſides the points of ſtate, to put my lord treaſurer in remembrance,

that his majeſty laid upon him the care of the improvement of the revenue of Ireland by all good means, of which I find his lordſhip very careful, and I will help him the beſt I can.

The matter of the revenue of the recuſants here in England, I purpoſe to put forward by a conference with my lord of Canterbury, upon whom the king laid it, and upon ſecretary Winwood; and, becauſe it is matter of the exchequer, with my lord treaſurer and Mr. Chancellor; and after to take the aſſiſtance of Mr. Attorney, and the learned counſel; and when we have put it in a frame, to certify his majeſty.

The buſineſs of the pirates is, I doubt not, by this time come to his majeſty, upon the letters of us the commiſſioners, whereof I took ſpecial care; and I muſt ſay, I find Mr. Vice-chamberlain a good able man with his pen. But to ſpeak of the main buſineſs, which is the match with Spain, the king knows my mind by a former letter; that I would be glad it proceeded with an united council; not but that votes and thoughts are to be free: but yet after a king hath reſolved, all men ought to co-operate, and neither to be active nor much locutive *in oppoſitum*; eſpecially in a caſe where a few diſſenting from the reſt, may hurt the buſineſs *in foro famae*.

Yeſterday, which was my weary day, I bid all the judges to dinner (which was not uſed to be) and entertained them in a private withdrawing chamber, with the learned counſel. When the feaſt was paſſed, I came amongſt them, and ſat me down at the end of the table, and pray'd them to think I was one of them, and but a foreman. I told them I was weary, and therefore muſt be ſhort, and that I would now ſpeak to them upon two points. Whereof the one was, that I would tell them plainly, that I was firmly perſuaded, that the former diſcords and differences between the chancery and other courts, were but fleſh and blood; and that now the men were gone, the matter was gone; and that for my part as I would not ſuffer any the leaſt diminution or derogation from the ancient and due power of the chancery, ſo if any thing ſhould be brought to them at any time, touching the proceedings of the chancery, which did ſeem to them exorbitant or inordinate, that they ſhould freely and friendly acquaint me with it, and we ſhould ſoon agree; or if not, we had a maſter that could eaſily both diſcern and rule. At which ſpeech of mine, beſides a great deal of thanks and acknowledgment, I did ſee chear and comfort in their faces, as if it were a new world.

The ſecond point was, that I let them know how his majeſty, at his going, gave me charge to call and receive from them the accounts of their circuits, according to his majeſty's former preſcript, to be ſet down in writing; and that I was to tranſmit the writings themſelves to his majeſty; and accordingly as ſoon as I have receiv'd them I will ſend them to his majeſty.

Some two days before I had a conference with ſome judges (not all, but ſuch as I did chuſe) touching the high commiſſion, and the extending of the ſame in ſome points; which I ſee I ſhall be able to diſpatch by conſent, without his majeſty's farther trouble.

I did call upon the committees alſo for the proceeding in the purging of Sir Edward Coke's *Reports*, which I ſee they go on with ſeriouſly.[a]

Thanks

[a] During the time that my lord chief juſtice Coke lay under the diſpleaſure of the court, ſome information was given to the king, that he having publiſhed eleven books of *Reports*, had written many things againſt his majeſty's prerogative. And being commanded to explain ſome of them, my lord chancellor Ellesmere doth thereupon in his letter of 22 Octob. 1616, write thus to the king: "According to your majeſty's "directions ſignified unto me by Mr. Solicitor, I called the lord chief juſtice before me on Thurſday the "17th inſtant, in preſence of Mr. Attorney, and others of your learned counſel. I did let him know your "Majeſty's acceptance of the few animadverſions, which upon review of his own labours he had ſent, tho' "fewer than you expected, and his excuſes other than you expected": And did at the ſame time inform him, that his majeſty was diſſatisfied with ſeveral other paſſages therein; and thoſe not the principal points of the caſes judged, but deliver'd by way of expatiation, and which might have been omitted without prejudice to the judgment; of which ſort the attorney and ſolicitor-general did for the preſent only ſelect five, which being deliver'd to the chief juſtice on the 17th of October, he returns his anſwers at large upon the 21ſt of the ſame month, the which I have ſeen under his own hand. 'Tis true the lord chancellor wiſhed he might have been ſpared all ſervice concerning the chief juſtice, as remembring the fifth petition of *dimitte nobis debita noſtra, etc.* Inſomuch that though a committee of judges was appointed to conſider theſe books, yet the matter ſeems to have ſlept, till after Sir Fr. Bacon was made lord keeper, it revived, and two judges more were

Thanks be to God, we have not much to do for matters of counſel, and I ſee now that his majeſty is as well able by his letters to govern England from Scotland, as he was to govern Scotland from England.

were added to the former. Whereupon Sir Edward Coke doth by his letter make his humble ſuit to the earl of Buckingham, 1. That if his majeſty ſhall not be ſatisfied with his former offer, *viz.* by the advice of the judges to explain and publiſh thoſe points, ſo as no ſhadow may remain againſt his prerogative, that then all the judges of England may be called thereto. 2. That they might certify alſo what caſes he had publiſhed for his majeſty's prerogative and benefit, for the good of the church, and quieting mens inheritances, and good of the commonwealth. But Sir Edward then, or ſoon after, coming into favour by the marriage of his daughter, I conceive there was no farther proceedings in this affair. It will be needleſs for me to declare what reputation theſe books have among the profeſſors of the law; but I cannot omit upon this occaſion, to take notice of a character Sir Fr. Bacon had ſome time before given them in his propoſition to the king, touching the compiling and amendment of the laws of England. "To give every "man his due, had it not been for Sir Edward Coke's *Reports* (which though they may have errors and ſome "peremptory and extrajudicial reſolutions more than are warranted, yet they contain infinite good deciſions "and rulings over of caſes) the law by this time had been almoſt like a ſhip without bailaſt: for that "the caſes of modern experience, are fled from thoſe that are adjudged and ruled in former time." *Stephens.* See p. 176. of this Vol.

CLXXV. A note of ſome precedents as come neareſt the caſe of the lord Brackley: referred to in the foregoing letter.

THE lord Hay was created baron of Sawley, 28 *Junii* 13 *Regis*, without the ceremony of robing (as I take it) but then the patent was (as I conceive it alſo) delivered to the perſon of the ſaid lord Hay by the king's own hands; and again, the dignity of a baron hath incident to it only the ceremony of robes, and not the cincture of the ſword, coronet, etc.

The duke of Lenox was created earl of Richmond, 6 *Octobris* 11 *Regis*, without any of the ceremonies (as I take it) but the patent (as I conceive it alſo) was deliver'd to the perſon of the ſaid duke, with the hands of the king: and again, in regard he was inveſted of the ſuperiour dignity of duke of Scotland, the ceremonies were not ſo fit to be iterated.

King Henry VII created Edward Courtenay knight, earl of Devon, 26 *Octobris*, 1 *Regni*, *teſte meipſo apud Weſtmonaſterium*, etc. Whereby it may be collected, that it was done without the ſolemnities; for that where the ſolemnities were performed, it hath uſed to be with a *hiſce teſtibus*, and not *teſte meipſo*; and whether it were deliver'd with the king's hand or not, it appears not.

Edward VI created William earl of Eſſex, marquis of Northampton, 16 Feb. 1 Edw. VI. and it is mentioned to be *per cincturam gladii*, *cappam honoris*, *et circuli aurei impoſitionem*; but whether the delivery was by the king's own hand *non conſtat*, but it was *teſte meipſo*, and not *hiſce teſtibus*.

The ſame king created John viſcount L'Iſle, earl of Warwick, the ſame time, and it is mentioned to be *per cincturam gladii*, etc. but it was *teſte meipſo*, and not *hiſce teſtibus*.

Edward VI created Thomas lord Wriotheſley, earl of Southampton in the ſame day, and in the ſame manner, with a *teſte meipſo*, and not *hiſce teſtibus*. Theſe three creations being made upon one day, and when the king was a child of about nine years old, and in the very entrance of his reign, for the patents bear date at the Tower of London, doth make me conjecture that all the ſolemnities were performed; but whether the king endured to be preſent at the whole ceremony, and to deliver the patents with his own hand, I doubt; for that I find that the very ſelf-ſame day, year, and place, the king created his uncle the earl of Hertford, to be duke of Somerſet *per cincturam gladii*, *cappam honoris*, *et circuli aurei impoſitionem*, *et traditionem virgulae aureae*, with a *hiſce teſtibus*, and not *teſte meipſo*, and with a *datum per manus noſtras:* yet theſe things are but conjectural.

I find no precedents for a *non obſtante*, or a diſpenſation with the ſolemnities, as the lord Brackley's bill was penned.

CLXXVI. To the Lord Keeper.

My honoured Lord,

I Have acquainted his majeſty with your letter, and the papers that came incloſed, who is exceedingly well ſatisfied with that account you have given him therein, eſpecially with the ſpeech you made at the taking of your place in the chancery. Whereby his majeſty perceiveth that you have not only given proof how well you underſtand the place of a chancellor, but done him much right alſo, in giving notice unto thoſe that were preſent, that you have received ſuch inſtructions from his majeſty; whoſe honour will be ſo much the greater, in that all men will acknowledge the ſufficiency and worthineſs of his majeſty's choice, in preferring a man of ſuch abilities to that place, which beſides cannot but be a great advancement and furtherance to his ſervice: and I can aſſure your lordſhip, that his majeſty was never ſo well pleaſed, as he is with this account you have given him of this paſſage. Thus, with the remembrance of my ſervice, I reſt,

Your Lordſhip's ever at command,

Edinburgh, 18 May 1617. G. BUCKINGHAM.

CLXXVII. To the Earl of BUCKINGHAM.

My very good Lord,

I Know your lordſhip hath a ſpecial care of any thing that concerneth the queen. She was entered into diſlike of her ſolicitor, this bearer Mr. Lowder, and reſolute in it. To ſerve, and not to pleaſe, is no man's condition. Therefore, upon knowledge of her pleaſure, he was willing to part with his place, upon hopes not to be deſtituted, but to be preferred to one of the barons places in Ireland. I pray move the king for him, and let his majeſty know from me, that I think (howſoever he pleaſed not here) he is fit to do his majeſty ſervice in that place; he is grave and formal (which is ſomewhat there) and ſufficient enough for that place. The queen had made Mr. Hackwell her ſolicitor, who hath for a long time taken much pains in her buſineſs, wherein ſhe hath done well. He was an oppoſite in parliament, as Jones was, that the king hath made chief juſtice of Ireland. But I hold it no ill counſel to join, or to remove ſuch men. God preſerve and proſper you.

Your true and devoted friend and ſervant,

Whitehall, 25 May 1617. FR. BACON.

CLXXVIII. To the Earl of BUCKINGHAM.

My very good Lord,

I Shall write to your lordſhip of a buſineſs which your lordſhip may think to concern myſelf; but I do think it concerneth your lordſhip much more. For as for me, as my judgment is not ſo weak to think it can do me any hurt, ſo my love to you is ſo ſtrong, as I would prefer the good of you and yours, before mine own particular.

It ſeemeth ſecretary Winwood hath officiouſly buſied himſelf to make a match between your brother and Sir Edward Coke's daughter: and, as we hear, he doth it rather to make a faction, than out of any great affection to your lordſhip; it is true, he hath the conſent of Sir Edward Coke (as we hear) upon reaſonable conditions for your brother; and yet no better than, without queſtion, may be found in ſome other matches. But the mother's conſent is not had, nor the young gentlewoman's, who expecteth a great fortune from her mother, which without her conſent is endangered. This match, out of my faith and

freedom towards your lordſhip, I hold very inconvenient both for your brother and yourſelf.

Firſt, He ſhall marry into a diſgraced houſe, which in reaſon of ſtate is never held good.

Next, He ſhall marry into a troubled houſe of man and wife, which in religion and chriſtian diſcretion is diſliked.

Thirdly, Your lordſhip will go near to loſe all ſuch your friends as are adverſe to Sir Edward Coke; myſelf only except, who out of a pure love and thankfulneſs ſhall ever be firm to you.

And laſtly and chiefly (believe it) it will greatly weaken and diſtract the king's ſervice; for though, in regard of the king's great wiſdom and depth, I am perſuaded, thoſe things will not follow which they imagine; yet opinion will do a great deal of harm, and caſt the king back, and make him relapſe into thoſe inconveniencies which are now well on to be recovered.

Therefore my advice is, and your lordſhip ſhall do yourſelf a great deal of honour, if, according to religion and the law of God, your lordſhip will ſignify unto my lady your mother, that your deſire is, that the marriage be not preſſed or proceeded in without the conſent of both parents; and ſo either break it altogether, or defer any farther delay in it, till your lordſhip's return: and this the rather, for that (beſides the inconvenience of the matter itſelf) it hath been carried ſo harſhly and inconſiderately by ſecretary Winwood, as, for doubt that the father ſhould take away the maiden by force, the mother, to get the ſtart, hath conveyed her away ſecretly; which is ill of all ſides. Thus hoping your lordſhip will not only accept well, but believe my faithful advice, who by my great experience in the world muſt needs ſee farther than your lordſhip can; I ever reſt,

Your Lordſhip's true and moſt devoted friend and ſervant,

FR. BACON, *C. S.*

I have not heard from your lordſhip ſince I ſent the king my laſt account of council buſineſs; but I aſſure myſelf you received it, becauſe I ſent at the ſame time a packet to ſecretary Lake, who hath ſignified to me that he hath received it.

I pray your lordſhip deliver to his majeſty this little note of chancery buſineſs.

July 12. 1617.

CLXXIX. To the KING.

It may pleaſe your moſt excellent Majeſty,

I Think it agreeable to my duty, and the great obligation wherein I am tied to your Majeſty, to be freer than other men in giving your Majeſty faithful counſel, while things are in paſſing; and more bound than other men in doing your commandments, when your reſolution is ſettled, and made known to me.

I ſhall therefore moſt humbly crave pardon from your Majeſty, if in plainneſs, and no leſs humbleneſs, I deliver to your Majeſty my honeſt and diſintereſted opinion, in the buſineſs of the match of Sir John Villiers, which I take to be *magnum in parvo:* preſerving always the laws and duties of a firm friendſhip to my lord of Buckingham, whom I will never ceaſe to love, and to whom I have written already, but have not heard yet from his lordſhip.

But firſt, I have three ſuits to make to your Majeſty, hoping well you will grant them all.

The firſt is, that if there be any merit in drawing on that match, your Majeſty would beſtow the thanks not upon the zeal of Sir Edward Coke to pleaſe your Majeſty, nor upon the eloquent perſuaſions or pragmaticals of Mr. Secretary Winwood, but upon them, that carrying your commandments and

directions with ſtrength and juſtice, in the matter of the governor of Diepe[a], in the matter of Sir Robert Rich, and in the matter of protecting the lady, according to your Majeſty's commandment; have ſo humbled Sir Edw. Coke, as he ſeeketh now that with ſubmiſſion, which (as your Majeſty knoweth) before he rejected with ſcorn: for this is the true orator that hath perſuaded this buſineſs; as I doubt not but your Majeſty in your excellent wiſdom doth eaſily diſcern.

My ſecond ſuit is, that your Majeſty would not think me ſo puſillanimous, as that I, that when I was but Mr. Bacon, had ever (through your Majeſty's favour) good reaſon at Sir Edward Coke's hands, when he was at the greateſt, ſhould now, that your Majeſty of your great goodneſs hath placed me ſo near your chair (being, as I hope, by God's grace, and your inſtructions, made a ſervant according to your heart and hand) fear him, or take umbrage of him, in reſpect of mine own particular.

My third ſuit is, that if your Majeſty be reſolved the match ſhall go on, after you have heard my reaſons to the contrary; I may receive therein your particular will and commandments from yourſelf, that I may conform myſelf thereunto; imagining with myſelf (though I will not wager on womens minds) that I can prevail more with the mother than any other man. For if I ſhould be requeſted in it from my lord of Buckingham, the anſwers of a true friend ought to be, that I had rather go againſt his mind than againſt his good: but your Majeſty I muſt obey; and beſides I ſhall conceive that your Majeſty, out of your great wiſdom and depth, doth ſee thoſe things, which I ſee not.

Now therefore, not to hold your Majeſty with many words (which do but drown matter) let me moſt humbly deſire your Majeſty to take into your royal conſideration, that the ſtate is at this time not only in good quiet and obedience, but in a good affection and diſpoſition. Your Majeſty's prerogative and authority having riſen ſome juſt degrees above the horizon more than heretofore, which hath diſperſed vapours: your judges are in good temper; your juſtices of the peace (which is the body of the gentlemen of England) grow to be loving and obſequious, and to be weary of the humour of ruffling: all mutinous ſpirits grow to be a little poor, and to draw in their horns; and not the leſs for your Majeſty's diſauthoriſing the man I ſpeak of. Now then I reaſonably doubt, that if there be but an opinion of his coming in, with the ſtrength of ſuch an alliance, it will give a turn and relapſe in mens minds, into the former ſtate of things, hardly to be holpen, to the great weakening of your Majeſty's ſervice.

Again, your Majeſty may have perceived, that as far as it was fit for me in modeſty to adviſe, I was ever for a parliament; which ſeemeth to me to be *cardo rerum* or *ſumma ſummarum* for the preſent occaſions. But this my advice was ever conditional; that your Majeſty ſhould go to a parliament with a council united, and not diſtracted; and that your Majeſty will give me leave never to expect, if that man come in. Not for any difference of mine own (for I am *omnibus omnia* for your Majeſty's ſervice) but becauſe he is by nature unſociable, and by habit popular, and too old now to take a new ply. And men begin already to collect, yea and to conclude, that he that raiſeth ſuch a ſmoke to get in, will ſet all on fire when he is in.

It may pleaſe your Majeſty, now I have ſaid, I have done; and as I think I have done a duty not unworthy the firſt year of your laſt high favour, I moſt humbly pray your Majeſty to pardon me, if in any thing I have erred; for my errors ſhall always be ſupplied by obedience; and ſo I conclude with my prayers for the happy preſervation of your Majeſty's perſon and eſtate.

Your Majeſty's moſt humble, bounden, and moſt devoted ſervant,

Gorhambury, July 25. 1617. FR. BACON, *C. S.*

[a] All that I have ſeen relating to the difference between the governor of Diepe and Sir Edward Coke, is contained in a letter of ſecretary Winwood's to my lord Buckingham, dated 29 June this year, and in theſe words: "Sir Edward Coke hath conſigned into the hands of the lords 2400 *l.* for the ſatisfaction of the "French ambaſſador, in the cauſe which concerneth the governor of Diepe." *Stephens.*

CLXXX.

CLXXX. To the Earl of Buckingham.

My very good Lord,

I Do think long to hear from your lordſhip, touching my laſt letter, wherein I gave you my opinion touching your brother's match. As I then ſhewed my diſlike of the matter, ſo the carriage of it here in the manner I diſlike as much. If your lordſhip think it is humour or intereſt in me that leads me, God judge my ſincerity. But I muſt ſay, that in your many noble favours towards me, they ever moved and flowed from yourſelf, and not from any of your friends whatſoever; and therefore in requital give me leave, that my counſels to you again be referred to your happineſs, and not to the deſires of any of your friends. I ſhall ever give you, as I give my maſter, ſafe counſel, and ſuch as time will approve.

I receiv'd yeſterday from Mr. Attorney the queen's bill, which I ſend your lordſhip. The payment is not out of lands, but out of the cuſtoms, and ſo it can be but the rent. Your lordſhip remembereth, it is but in a caſe which I hope ſhall never be; that is, after his majeſty's death, if ſhe ſurvive. God ever bleſs and direct you.

Your Lordſhip's moſt faithful and devoted friend and ſervant,

Gorhambury, July 25. 1617. Fr. Bacon, *C. S.*

CLXXXI. To the King.

It may pleaſe your moſt excellent Majeſty,

I Dare not preſume any more to reply upon your Majeſty, but I reſerve my defence till I attend your Majeſty at your happy return; when I hope verily to approve myſelf, not only a true ſervant to your Majeſty, but a true friend to my lord of Buckingham; and for the times alſo, I hope to give your Majeſty a good account, though diſtance of place may obſcure them. But there is one part of your Majeſty's letter that I could be ſorry to take time to anſwer; which is, that your Majeſty conceiveth, that whereas I wrote that the height of my lord's fortune might make him ſecure, I meant that he was turned proud, or unknowing of himſelf: ſurely the opinion which I have ever had of my lord (whereof your Majeſty is beſt witneſs) is far from that. But my meaning was plain and ſimple, that his lordſhip might, through his great fortune, be the leſs apt to caſt and foreſee the unfaithfulneſs of friends, and the malignity of enemies, and accidents of time. Which is a judgment (your Majeſty knoweth better than I) that the beſt authors make of the beſt, and beſt tempered ſpirits, *ut ſunt res humanae*; inſomuch that Guicciardine maketh the ſame judgment (not of a particular perſon) but of the wiſeſt ſtate of Europe, the ſenate of Venice, when he ſaith, their proſperity had made them ſecure, and underweighers of perils. Therefore I beſeech your Majeſty to deliver me in this from any the leaſt imputation upon my dear and noble lord and friend. And ſo expecting that that ſun which when it went from us, left us cold weather, and now it is returned towards us hath brought with it a bleſſed harveſt; will, when it cometh to us, diſpel and diſperſe all miſts and miſtakings.

July 31. 1617.

CLXXXII. To the Earl of Buckingham.

My very good Lord,

SINCE my laſt to your lordſhip, I did firſt ſend for Mr. Attorney-General, and made him know, that ſince I heard from court, I was reſolved to further the match and the conditions thereof for your lordſhip's brother's advancement the beſt I could. I did ſend alſo to my lady Hatton and ſome other ſpecial friends, to let them know, I would in any thing declare myſelf for the match; which I did, to the end that if they had any apprehenſion of my aſſiſtance, they might be diſcouraged in it. I ſent alſo to Sir John Butler, and after by letter to my lady your mother, to tender my performance of any good office towards the match or the advancement from the mother. This was all I could think of for the preſent.

I did ever foreſee, that this alliance would go near to loſe me your lordſhip that I hold ſo dear; and that was the only reſpect particular to myſelf that moved me to be as I was, till I heard from you. But I will rely upon your conſtancy and nature, and my own deſerving, and the firm tye we have in reſpect of the king's ſervice.

In the mean time I muſt a little complain to your lordſhip, that I do hear my lady your mother, and your brother Sir John do ſpeak of me with ſome bitterneſs and neglect. I muſt bear with the one as a lady, and the other as a lover, and with both for your lordſhip's ſake, whom I will make judge of any thing they ſhall have againſt me. But I hope, tho' I be a true ſervant to your lordſhip, you will not have me to be a vaſſal to their paſſions, ſpecially as long as they are governed by Sir Edward Coke and ſecretary Winwood, the latter of which I take to be the worſt; for Sir Edward Coke, I think, is more modeſt and diſcreet: therefore your lordſhip ſhall do me right; and yet I ſhall take it for favour, if you ſignify to them, that you have received ſatisfaction from me, and would have them uſe me friendly and in good manner. God keep us from theſe long journeys and abſence, which make miſunderſtandings and give advantage to untruth, and God ever proſper and preſerve your lordſhip.

Your Lordſhip's true and devoted friend and ſervant,

Gorhambury, Aug. 23. 1617. Fr. Bacon, *C. S.*

CLXXXIII. A Memorial for your Majesty.

ALTHOUGH I doubt not but your Majeſty's own memory and care of your affairs will put you in mind of all things convenient, againſt you ſhall meet with your council, yet ſome particulars I thought it not unfit to repreſent unto your Majeſty; becauſe they paſſed the labour of your council.

I. Some time before your departure, here was delivered unto you by the officers of your exchequer, a computation of your revenue and expence, wherein was expreſſed that your revenue ordinary was not only equal to your expence, but did ſomewhat exceed it, though not much.

In this point, becauſe the half year will now be expired at Michaelmas, it ſhall be fit, that your Majeſty call to account, whether that equality hath held for this half year; and if not, what the cauſes have been, and whether the courſe preſcribed hath been kept, that the ordinary expence hath been borne out of the ordinary revenue, and the extraordinary only out of ſuch money as hath come in by extraordinary means, or elſe your eſtate cannot clearly appear.

II. To maintain this equality, and to cauſe your Majeſty's ſtate to ſubſiſt in ſome reaſonable manner till farther ſupply might be had, it was found to be neceſſary that 200,000 *l.* of your Majeſty's moſt pregnant and preſſing debts

ſhould be diſcharged; and after conſideration of the means how to do that, two ways were reſolved on. One, that 100,000 *l.* ſhould be diſcharged to the farmers of your cuſtoms by 25,000 *l.* yearly, they having for their ſecurity power to defalke ſo much of their rent in their own hands: but becauſe if that ſhould be defalked, then your ordinary ſhould want of ſo much, it was agreed that the farmers ſhould be paid the 25,000 *l.* yearly in the ſale of woods.

In this point it is fit for your Majeſty to be informed what hath been done, and whether order hath been taken with the farmers for it, and what debts were aſſigned to them ſo to diſcharge; for of the particulars of that courſe I never heard yet.

And becauſe it is apparent that the woodfalls this year do not amount to half that ſum of 25,000 *l.* your Majeſty is to give charge that conſideration be had how the ſame ſhall be ſupplied by ſome other extraordinary for the preſent year, or elſe here will follow a fracture of the whole aſſignments.

Item, Your Majeſty may pleaſe to call for information how that money raiſed upon the woods is employed, ſo much as is already received, and to be wary that no part hereof be ſuffered to go for extraordinaries, but to be employed only for the uſe for which it is aſſigned, or elſe a greater rupture will follow in your aſſignments.

Item, A ſpecial conſideration is to be had what courſe ſhall be taken for the reſt of the years with the wood ſales for ſupply of this 25,000 *l.* yearly.

III. The other hundred thouſand pound was agreed to be borrowed, and an allotment made by my lords of the council at the table, how the ſame ſhould be imployed, and for what ſpecial ſervices, whereof I deliver to your Majeſty herewith a copy.

In which point it may pleaſe your Majeſty to cauſe yourſelf to be informed how that allotment hath been obſerved, and becauſe it is likely that a good part of it hath gone towards the charges of this your journey to Scotland (at leaſt ſo it is paid) your Majeſty is to call for the particulars of that charge, that you may ſee how much of that hundred thouſand it taketh up.

And then conſideration is to be had how it may be ſupplied with ſome extraordinary comings in, as namely the moneys to come from the merchant-adventurers, that the ſame be allotted to none other uſe, but to perform this allotment, that ſo the foundation laid may be maintained, or elſe all will be to ſeek; and if there be any other extraordinary means to come to your Majeſty, that they may be reſerved to that uſe.

And becauſe care muſt be had to keep your credit in London, for this money borrowed, your Majeſty may pleaſe to call for information what is done in the matter of the foreſts, and what ſum, and in what reaſonable time, is like to be made thereof.

The extraordinaries which it is like will be alledged for this year:

Your Majeſty's journey into Scotland.
The lord Hay's employment into France.
The lord Roos into Spain.
The Baron de Tour extraordinary from France.
Sir John Bennet to the Archduke.
The enlarging of your park at Theobalds.
Sir John Digby's ſending into Spain.

Of all which when your Majeſty hath ſeen an eſtimate what they amount unto, and what money hath been already delivered towards them, which I fear will fall to be out of the moneys borrowed at London; then it is to be conſidered what extraordinaries are any ways to come in, which may ſupply theſe extraordinaries laid out, and be imployed for the uſes for which the moneys borrowed were intended.

CLXXXIV. To the Earl of Buckingham.

My ever beſt Lord, now better than yourſelf,

YOUR lordſhip's pen or rather pencil hath pourtrayed towards me ſuch magnanimity and nobleneſs and true kindneſs, as methinketh I ſee the image of ſome ancient virtue, and not any thing of theſe times. It is the line of my life, and not the lines of my letter, that muſt expreſs my thankfulneſs: wherein if I fail, then God fail me, and make me as miſerable as I think myſelf at this time happy by this reviver, through his majeſty's ſingular clemency, and your incomparable love and favour. God preſerve you, proſper you, and reward you for your kindneſs to

Your raiſed and infinitely obliged friend and ſervant,

Sept. 22. 1617. Fr. Bacon, *C. S.*

CLXXXV. To the Earl of Buckingham.

My very good Lord,

I Send your lordſhip the certificate touching the enrollment of prentices. We can find no ground for it by law. Myſelf ſhall ever be ready to further things that your lordſhip commendeth; but where the matter will not bear it, your lordſhip, I know, will think not the worſe, but the better of me, if I ſignify the true ſtate of things to your lordſhip; reſting ever

Your Lordſhip's true friend and devoted ſervant,

York-houſe, Octob. 29. 1617. Fr. Bacon, *C. S.*

The Certificate.

ACCORDING to his majeſty's command ſignified by your lordſhip's letters, we have adviſedly conſider'd of the petition touching the inrollment of apprentices indentures, and heard the petitioners counſel, and do find as followeth:

1. That the act of parliament 5 Eliz. doth not warrant the erecting of an office to inroll ſuch indentures in cities, towns corporate, or market towns; but if any ſuch inrollment ſhould be, it muſt be by the officers there, who are aſſigned to perform ſundry other things touching apprentices and ſervants.

2. That in country villages (for which the ſuit carries moſt colour) we cannot give the ſuitors hope, that any profit will be there made, warrantable by law.

Thus we have (according to our duties) certified our opinions of this petition, ſubmitting the ſame nevertheleſs to his majeſty's great wiſdom; and reſt,

At your Lordſhip's command,

Octob. 25. 1617. Fr. Bacon, *C. S.* H. Montague. Tho. Coventry.

CLXXXVI. To the Earl of Buckingham.

My very good Lord,

THE liking which his majeſty hath of our proceeding concerning his houſhold, telleth me that his majeſty cannot but diſlike the declining and tergiverſation of the inferior officers; which by this time he underſtandeth.

There be but four kinds of retrenchments. 1. The union of tables. 2. The putting down of tables. 3. The abatement of diſhes to tables. 4. The cutting

off new diets and allowance lately raiſed; and yet perhaps ſuch as are more neceſſary than ſome of the old.

In my opinion, the firſt is the beſt and moſt feaſible. The lord chamberlain's table is the principal table of ſtate. The lord ſteward's table, I think, is much frequented by Scottiſh gentlemen. Your lordſhip's table hath a great attendance; and the groom of the ſtole's table is much reſorted to by the bedchamber. Theſe would not be touched. But for the reſt (his majeſty's caſe conſider'd) I think they may well be united into one.

Theſe things are out of my element, but my care runneth where the king's ſtate moſt laboureth: [a] Sir Lionel Cranfield is yet ſick, for which I am very ſorry; for methinks his majeſty, upon theſe toſſings over of his buſineſs from one to others, hath an apt occaſion to go on with ſub-committees. God ever preſerve and proſper you.

Your Lordſhip's true friend and devoted ſervant,

York-houſe, Nov. 19. 1617. FR. BACON, *C. S.*

[a] Sir Lionel Cranfield was a man of ſo much note in theſe times, and ſo often named in theſe papers, that I cannot omit taking ſome notice of his good and bad fortunes. He was bred a merchant, yet by his great abilities in, and application to buſineſs, and the relation he had to my lord of Buckingham by marriage, he was raiſed to be maſter of the court of requeſts, then of the wardrobe, and after of the court of wards, created lord Cranfield, and earl of Middleſex: miſſing the lord keeper's place, he was conſtituted lord high treaſurer, which being an office he underſtood as well as any, we may conclude his integrity fell ſhort of his ability, from the ſevere judgment given againſt him by the houſe of lords in 1624. *Stephens.*

CLXXXVII. To the Lord Keeper.

My Honourable Lord,

HIS majeſty commandeth me to write to your lordſhip, that he wonders your hand being at that letter of the lords of the council, which he ſaith is a very blunt one: you have not beſides ſent him ſome advice of your own, his majeſty having only intruſted you to ſpeak with Sir Lionel Cranfield about his eſtate.

Your Lordſhip's faithful friend and ſervant,

Newmarket, 19 Nov. 1617. G. BUCKINGHAM.

CLXXXVIII. To the Earl of BUCKINGHAM.

My very good Lord,

YESTERDAY at afternoon were read at the table his majeſty's [a] two letters, written with his own hand, the matter worthy the hand. For they

[a] One of theſe letters of K. James, as it contains a ſpecimen of the frugality and good œconomy of his court, and relates to the ſubject we are upon, I have borrowed from the Cabala, p. 258. in terms following.

A letter read at the council-board 21 Nov. 1617. touching the abatement of his majeſty's houſhold charge.

My Lords:

NO worldly thing is ſo precious as time: ye know what taſk I gave you to work upon, during my abſence; and what time was limited unto you, for the performance thereof. This ſame chancellor of Scotland was wont to tell me twenty four years ago, that my houſe could not be kept upon epigrams; long diſcourſes and fair tales will never repair my eſtate. *Omnis virtus in actione conſiſtit.* Remember, that I told you, the ſhoe muſt be made for the foot, and let that be the ſquare of all your proceeding in this buſineſs. Abate ſuperfluities in all things; and multitudes of unneceſſary officers, wherever they be placed. But for the houſhold, wardrobe, and penſions, cut and carve as many as may agree with the poſſibility of my means. Exceed not your own rule of 50,000 *l.* for the houſhold. If you can make it leſs I will account it for good ſervice. And that you may ſee I will not ſpare mine own perſon, I have ſent, with this bearer, a note of the ſuperfluous charges concerning my mouth, having had the happy opportunities of this meſſenger, in an errand ſo nearly concerning his place. In this I expect no anſwer in word or writing, but only the real performance, for a beginning to relieve me out of my miſeries. For now the ball is at your feet, and the world ſhall bear me witneſs, that I have put you fairly to it; and ſo praying God to bleſs your labours, I bid you heartily farewel.

Your own,

JAMES R.

Mr. Stephens ſays, In the other I ſuppoſe his majeſty apprehends that the vigour the council at firſt ſhew'd in reducing the charge of his houſhold, would not be of long continuance: it being obſerv'd by Tacitus, in the words here cited, to be a thing not unuſual in publick affairs, that violent beginnings had negligent concluſions.

they were written *ex arte imperandi*, if I can judge; and I hope they and the like will diſinchant us of the opinion, which yet ſticks with us, that to-day will be as yeſterday, and to-morrow as to-day; ſo as there will be (as he ſaith) *Acribus initiis, ſine incurioſo.*

I hold my opinion given in my former letter, that the uniting of ſome tables is the moſt paſſable way. But that is not all: for when that is done, the king may ſave greatly in that which remaineth. For if it be ſet down, what tables ſhall be fixed, and what diet allowed to them, my ſteward (as ill a *meſnager* as I am) or my lord mayor's ſteward, can go near to tell, what charge will go near to maintain the proportion. Then add to that ſome large allowance for waſte (becauſe the king ſhall not loſe his prerogative to be deceived more than other men) and yet, no queſtion, there will be a great retrenchment. But againſt this laſt abatement will be fronted the payment of arrears. But I confeſs I would be glad that I might ſee, or rather, that a parliament may ſee, and chiefly that the king (for his own quiet) may ſee, that upon ſuch a ſum paid, ſuch an annual retrenchment will follow: for things will never be done in act, except they be firſt done in conceit.

I know theſe things do not pertain to me; for my part is to acquit the king's office towards God by adminiſtration of juſtice, and to oblige the hearts of his people to him by the ſame, and to maintain his prerogative. But yet becauſe it is *in hoc* that the king's caſe laboureth, I cannot but yield my care, and my ſtrength too, in counſel, ſuch as it is; which cannot be ſo much as it was between our Lady-day and Michaelmas laſt. But whatſoever it is, it is wholly his majeſty's, without any deflexion.

As ſoon as I find any poſſibility of health in Sir Lionel Cranfield, to execute a ſub-commiſſion, I will by conference with him frame a draught of a letter from his majeſty, for which there is the faireſt occaſion in the world. And the king hath prepared it as well as poſſible. God ever preſerve and proſper you.

Your Lordſhip's true friend and devoted ſervant,

York-houſe, Nov. 22. 1617. FR. BACON, *C. S.*

CLXXXIX. To the Earl of BUCKINGHAM.

My Lord,

HOW well I wiſh to Sir Gilbert Haughton, himſelf I dare ſay doth not doubt, partly out of mine own affection, and chiefly for your lordſhip's affection towards him, which to me is more than mine own. That the king ſhould make bargains of hope, when his treaſure ſufficeth not for his own charge, I may not adviſe for my deareſt friends; for I am nailed to the king's eſtate. But two things I ſhall aſſent unto; the one, that if the king can redeem his works without charge of officers, I ſhall be glad of it, both for the gentleman's ſake, and becauſe I perceive the uniting of the allum-works in the king's hand is beſt; the other, that if his majeſty be pleaſed to ſignify his pleaſure to my lord treaſurer and me, that there be no forfeiture taken by Baniſter till the king ſhall adviſe of this bargain, we will hold him to it. God preſerve and proſper your lordſhip. Your lordſhip, I think, perceiveth both by ſcribbling and curſory inditing, that I write in ſtraits of buſineſs.

Your Lordſhip's true friend and devoted ſervant,

York-houſe, this 24th of Nov. 1617. FR. BACON, *C. S.*

CXC. To the Earl of BUCKINGHAM.

My very good Lord,

I Send your lordſhip a draught of a letter touching the ſub-commiſſion, written in wide lines, becauſe it may be the better amended by his majeſty. I think it is ſo penned as none can except to it, no nor imagine any thing of it.

it. For the houſhold-buſineſs there was given a fortnight's day: for the penſions, the courſe which I firſt propounded, of abating of a third throughout, and ſome wholly, ſeemeth well enter'd into. Theſe be no ill beginnings. But this courſe of the ſub-commiſſion threds all the king's buſineſs. God ever preſerve and proſper you.

Your Lordſhip's true friend and devoted ſervant,

York-houſe, Nov. 27. 1617. FR. BACON, *C. S.*

Sir Lionel Cranfield is now reaſonably well recover'd.

Draught of the Sub-commiſſion.

My Lords,

IN this firſt and greateſt branch of our charge concerning our houſe, we do find what difficulties are made, and what time is loſt, in diſputing of and deviſing upon the manner of doing it; whereof the matter muſt be, and is ſo fully reſolved. Neither can we but ſee in this, as in a glaſs, the like event to follow in the reſt upon like reaſon. For the inferior officers in every kind, who are beſt able for ſkill to propound the retrenchments, will out of intereſt or fearfulneſs make dainty to do ſervice; and that which is done with an ill-will, will never be well done. Again, to make it the act of the whole table, for the particular propoſitions and reckonings, will be too tedious for you, and will draw the buſineſs itſelf into length; and to make any particular committees of yourſelves, were to impoſe that upon a few, which requireth to be carried indifferently as the act of you all. For ſince the great officers themſelves think it too heavy for them, as our ſtate now is, to deal in it, without bringing it to the table; with much more reaſon may any particular perſons of you be loth to meddle in it, but at the board. In all which reſpects we have thought fit (neither do we ſee any other way) that you ſend unto us the names of the officers of our exchequer, and our cuſtom-houſe, and auditors, out of which we will make choice of ſome few, beſt qualified to be ſub-committees, for the better caſe, and the ſpeeding of the buſineſs by their continual travails and meetings; whoſe part and employment we incline to be to attend the principal officers in their ſeveral charges, and join themſelves to ſome of the inferior officers, and ſo take upon them the mechanick and laborious part of every buſineſs, thereby to facilitate and prepare it for your conſultations, according to the directions and inſtructions they ſhall receive from you from time to time.

CXCI. To the KING.

May it pleaſe your Majeſty,

BEING yeſterday aſſembled in council to proceed in the courſe we had begun for retrenchment of your Majeſty's expences; we received your princely letters, whereby we are directed to ſend to your Majeſty the names of the officers of the exchequer, cuſtom-houſe, and auditors, out of which you purpoſe to make choice of ſome to be ſub-committed to handle the mechanick and laborious part of that which your Majeſty had appointed to our care; we have, according to our duty, ſent unto your Majeſty the names of the ſeveral officers of your Majeſty in thoſe places, to be ordered as your wiſdom ſhall think beſt to direct. But withal, we thought it appertenant to our duties to inform your Majeſty how far we have proceeded in the ſeveral heads of retrenchments by your Majeſty at your departure committed unto us, that when you know in what eſtate our labours are, your judgment may the better direct any further courſe as ſhall be meet.

The matter of the houſhold was by us, ſome days ſince, committed peremptorily to the officers of the houſe, as matter of commandment from your Majeſty, and of duty in them, to reduce the expence of your houſe to a limited

charge of fifty thouſand pounds by the year, beſides the benefit of the compoſitions: and they have ever ſithence painfully (as we are informed) travailed in it, and will be ready on Sunday next, which was the day given them, to preſent ſome models of retrenchments of divers kinds, all aiming at your Majeſty's ſervice.

In the point of penſions we have made a beginning, by ſuſpending ſome wholly for a time, and of others of a third part; in which courſe we are ſtill going on, until we make it fit to be preſented to your Majeſty; in like manner the lord chamberlain, and the lord Hay did yeſterday report unto us, what their travail had ordered in the wardrobe: and although ſome doubt did ariſe unto us, whether your Majeſty's letters intended a ſtay of our labours, until you had made choice of the ſub-committee intended by you; yet preſuming that ſuch a courſe by ſub-committee was purpoſed rather for a furtherance, than lett to that work, we did reſolve to go on ſtill till your Majeſty's further directions ſhall come unto us; and then according to our duty we will proceed, as we ſhall be by your Majeſty commanded. In the mean time, we thought it our duty to inform your Majeſty of what we have done, that neither your Majeſty may conceive that we have been negligent in thoſe things which were committed unto us, nor your directions by your late letters hinder or caſt back that, which is already ſo far proceeded in. And ſo humbly kiſſing your royal hands, and praying to the Almighty for your long and happy reign over us, we reſt,

Your Majeſty's moſt humble and obedient ſubjects and ſervants,

5 Dec. 1617.

G. Cant.	Lenox.	Pembroke.
E. Worcester.	W. Wallingford.	L. Elien.
T. Arundel.	James Hay.	T. Edmonds.
E. Wotton.	Jul. Cæsar.	Edw. Coke.
T. Lake.	T. Suffolk.	C. Edmonds.

Fr. Bacon, *C. S.*

CXCII. To the Marquis of Buckingham.

My very good Lord,

I Write now only, rather in a kind of continuance and freſh ſuit, upon the king's buſineſs, than that the ſame is yet ripe, either for advertiſement, or advice.

The ſub-commiſſioners meet forenoon and afternoon, with great diligence, and without diſtraction or running ſeveral ways: which if it be no more than neceſſary, what would leſs have done? that is, if there had been no ſub-commiſſioners, or they not well choſen.

I ſpeak with Sir Lionel Cranfield, as cauſe requireth either for account or direction, and as far as I can, by the taſte I have from him, diſcern, probably their ſervice will attain, and may exceed his majeſty's expectation.

I do well like the courſe they take, which is, in every kind to ſet down (as in beer, in wine, in beef, in muttons, in corn, *etc.*) what cometh to the king's uſe, and then what is ſpent, and laſtly what may be ſaved. This way though it be not ſo accuſative, yet it is demonſtrative. *Nam rectum eſt index ſui et obliqui*, and the falſe manner of accompting, and where the gain cleaveth, will appear after by conſequence. I humbly pray his majeſty to pardon me for troubling him with theſe imperfect glances, which I do, both becauſe I know his majeſty thinketh long to underſtand ſomewhat, and leſt his majeſty ſhould conceive, that he multiplying honours and favours upon me, I ſhould not alſo increaſe and redouble my endeavours and cares for his ſervice. God ever bleſs, preſerve, and proſper his majeſty and your lordſhip, to whom I ever remain

Your true friend and moſt devoted ſervant,

16 Jan. 1617. Fr. Bacon, *C. S.*

CXCIII.

CXCIII. To Mr. MATTHEWS, about reading and giving judgment upon his writings.

SIR,

BECAUSE you ſhall not loſe your labour this afternoon, which now I muſt needs ſpend with * my lord chancellor, I ſend my deſire to you in this letter, that you will take care not to leave the writing, which I left with you laſt, with any man, ſo long, as that he may be able to take a copy of it; becauſe, firſt, it muſt be cenſured by you, and then conſidered again by me. The thing which I expect moſt from you is, that you would read it carefully over by yourſelf, and to make ſome little note in writing, where you think (to ſpeak like a critick) that I do perhaps *indormiſcere*, or where I do *indulgere genio*; or where, in fine, I give any manner of diſadvantage to myſelf. This, *ſuper totam materiam*, you muſt not fail to note; beſides, all ſuch words and phraſes as you cannot like; for you know in how high account I have your judgment.

* This ſeems to be ſpoken pleaſantly of himſelf, and to refer to Jan 15. $16\frac{17}{18}$, on which day the lord Verulam was by ſpecial warrant made lord chancellor. Rymer XVII. p. 55. and at which time probably ſome affairs that required privacy and retirement, might occur.

CXCIV. To the Marquis of BUCKINGHAM.

My very good Lord,

I Thought fit by this my private letter to your lordſhip, to give you an account of ſuch buſineſs as your lordſhip hath recommended unto me, that you may perceive that I have taken that care of them I ought, and ever ſhall in thoſe things you recommend or remit to me.

For the ſuit of the alehouſes which concerneth your brother Mr. Chriſtopher Villiers, and Mr. Patrick Mawl, I have conferr'd with my lord chief juſtice, and Mr. Solicitor thereupon, and there is a ſcruple in it, that it ſhould be one of the grievances put down in parliament; which if it be, I may not in my duty and love to you adviſe you to deal in it; if it be not, I will mould it in the beſt manner and help it forward. The ſtay is upon the ſearch of the clerk of the parliament, who is out of town; but we have already found, that the laſt grievance *in ſeptimo*, is not the ſame with this ſuit; but we doubt yet of another *in tertio*.

For the buſineſs of Mr. Leviſton, for your lordſhip's ſake (who I perceive keeps your noble courſe with me, in acquainting me with theſe things) I ſhall apply myſelf unto you; though in my nature I do deſire that thoſe that ſerve in the court where I ſit, though they be not in places of my gift, and ſo concerns not me nor my place in profit; yet I wiſh, I ſay, I might leave them in as good caſe as I find them. And this ſuit concerneth the main profit of the ſix clerks; who though they be of the maſter of the rolls his giſt, yet they ſerve in my court. But my greateſt doubt is, that the grant cannot be good in law; and that it is not like thoſe other precedents, whereof I have receiv'd a note. For the difference is, where things have been written by all the clerks indifferently and looſely (in which caſe the king may draw them into an office) and where they have appertained to one eſpecial office; in which caſe the king can no more take away the profits of a man's office, than he can the profits of his land. Therefore I think your lordſhip may do well to write to † Mr. Solicitor and ſerjeant * Finch, or ſome other lawyers that

† Sir Tho. Coventry.

* Sir Henry Finch, ſerjeant at law, being the firſt of his name that made a conſiderable figure in that profeſſion, I ſhall give a ſhort account of him. He was younger brother to Sir Moyle Finch of Eaſtwel in the county of Kent, and father of John lord Finch, keeper of the great ſeal in the reign of king Charles I. He died in 1625, leaving to poſterity a ſufficient teſtimony of his learning in the law, as well as the ſciences, in his book intitled, A deſcription of the common laws of England according to the rules of art, *etc.* His ſon's

that you truſt, or ſuch as Mr. Leviſton truſteth, being perſons of account, to inform you of the point in law, before you proceed any farther: for without that all is in vain.

For the buſineſs of Hawkins, touching the regiſter for the commiſſion of bankrupts; I am not yet ſatisfied likewiſe for the law, nor for the conveniency: but I rather incline to think it may paſs, and I have ſet it in a courſe by which it may be throughly informed.

For Sir Rowland Egerton's cauſe, and his lady's, the parties have ſubmitted themſelves unto me, and are content to do it by bond; and therefore I will undoubtedly make an end of it according to juſtice and conſcience.

For Sir Gilbert Houghton's buſineſs, I am in very good hope to effect your lordſhip's deſire for his good.

For Moor's buſineſs, concerning the printing of books, after hearing all parties, I have ſealed his patent; but for his former patent of ſalt, I dare not do it, without acquainting the council therewith, which I am ready to do, if he require that courſe to be taken.

If his majeſty at any time aſk touching the lord Clifton's buſineſs, I pray your lordſhip repreſent to his majeſty thus much: that whatſoever hath paſſed, I thank God I neither fear him nor hate him; but I am wonderful careful of the ſeats of juſtice, that they may ſtill be well munited, being principal ſinews of his majeſty's authority. Therefore the courſe will be (as I am adviſed) that for this heinous miſpriſion (that the party, without all colour or ſhadow of cauſe, ſhould threaten the life of his judge, and of the higheſt judge of the kingdom next his majeſty) he be firſt examin'd, and if he confeſs it, then an *ore tenus*; if he confeſs it not, then an information in the ſtar-chamber, and he to remain where he is till the hearing. But I do purpoſely forbear yet to have him examin'd, till the decree or agreement between him and my lord Aubigny (which is now ready) be perfected, leſt it ſhould ſeem an oppreſſion, by the terror of the one, to beat him down in the other. Thus I ever reſt,

Your Lordſhip's true friend, and devoted ſervant,

York-houſe, Jan. 25. 1617. FR. BACON, *Canc.*

I pray your lordſhip to pardon me, if in reſpect of a little watering in one of mine eyes, I have written this letter, being long and private buſineſs, in my ſecretary's hand.

ſon's good parts and elocution were acknowledged by the greateſt of his enemies; which accompliſhments, though he died without iſſue, have eminently appear'd in ſome other deſcendants from his honourable family. *Stephens.*

CXCV. To the Lord Chancellor.

My honourable Lord,

I Have received your lordſhip's letters, wherein I ſee the continuance of your love and reſpect to me, in any thing I write to you of, for which I give your lordſhip many thanks, deſiring nothing for any man but what you ſhall find juſt and convenient to paſs. I am very glad to underſtand that there is ſo good hope of Sir Gilbert Houghton's buſineſs, which I muſt needs aſcribe to your lordſhip's great favour toward him for my ſake, which I will ever acknowledge. If his majeſty at any time ſpeak of the lord Clifton's buſineſs, I will anſwer according to that your lordſhip hath written, *etc.*

Your Lordſhip's faithful ſervant,

Newmarket, the laſt of Jan. 1617. G. BUCKINGHAM.

CXCVI. To the KING.

It may pleaſe your moſt excellent Majeſty,

FINDING as well by your Majeſty's diſpatches and directions to your council, as now by ſpeech with Mr. Secretary Lake, that your Majeſty is content to be troubled with buſineſs of ſundry natures; I thought good, according to the duty of my place, and the neceſſity of the occaſion, to put your Majeſty in mind, that on this day ſeven-night, being Friday in the morning, I am, according to cuſtom, to give a charge and admonition to the judges and juſtices of peace now before the circuits, wherein I am humbly to crave your Majeſty's pleaſure and directions.

I have for your Majeſty's better eaſe ſet down the heads, which by the preſcript of your book, and out of the conſideration of the preſent times, I have thought fitteſt to be remembered. I have alſo ſent your Majeſty the laſt account of the judges circuits, not to trouble you with the reading of them all; but to the end that if upon my memorial, or otherwiſe out of your Majeſty's own memory, which is above memorials, you ſhould have occaſion to reſort to thoſe accounts, the papers may be by you.

The point of greateſt weight, in my opinion, is the carrying of a balanced hand at this time in the matter of recuſants, in regard of the treaty with Spain. For it were good, in reſpect of your people, that there were no note made, that the ſtring is relaxed, and in reſpect of the treaty, that it is not ſtrained; and therefore that the proceeding in thoſe cauſes be rather diligent than ſevere.

I am wonderful glad to hear that this extremity of weather, which I think the Muſcovite hath brought with him, hath not touched your Majeſty, whoſe health and eaſe is far dearer to me than my life with all the appurtenances. God ever preſerve and proſper you.

Your Majeſty's moſt faithful and moſt obliged ſervant,

Friday morning, Feb. 6. 1617. FR. BACON, *Canc.*

Your Majeſty will be pleaſed your anſwer be with me on Thurſday at noon, or ſoon after.

CXCVII. To the Lord Chancellor.

My honourable Lord,

I Have acquainted his majeſty with your letter to me, and delivered likewiſe to him the letter and other things directed to his majeſty, who hath commanded me to return this anſwer to them all.

Firſt, For your memorial of your charge to the judges, he liketh it ſo well, that he findeth nothing either to be added or diminiſhed, and was ſo well ſatisfied therewith, that he accounteth it needleſs to read the other papers, but ſealed them up again, and ſendeth them back to your lordſhip without reading them. Only in the point of recuſants his majeſty is of the quite contrary opinion to you; for though he would not by any means have a more ſevere courſe held, than his laws appoint in that caſe, yet ſith the many reaſons why, there ſhould be no mitigation above that which his laws have enacted, and his own conſcience telleth him to be fit. As firſt, the papiſts in his kingdom have taken ſuch heart upon the commiſſion given to Sir John Digby touching the match with Spain, that they have ſent copies thereof privately up and down, and are ſo lifted up in their hopes of what they deſire, that his majeſty cannot but take a more ſevere courſe (as far as by his laws he may) than hitherto he hath done. Beſides, when they ſhall ſee a harder hand carried toward them than hath been accuſtomed, his majeſty aſſureth himſelf, they will employ all their means to further the match, in hope of mitigating of that ſeverity when it ſhall be accompliſhed. And though theſe reaſons were not, his majeſty would account it a baſeneſs in a prince to ſhew ſuch a deſire of the

match, as to ſlack any thing in his courſe of government, much more in propagation of the religion he profeſſeth, for fear of giving hindrance to the match thereby. And ſo with many thanks for your favours to my brother in his buſineſs, I reſt,

Your Lordſhip's faithful ſervant,

Newmarket, 8 Feb. 1617. G. BUCKINGHAM.

CXCVIII. To the Marquis of BUCKINGHAM.

My very good Lord,

MR. Chancellor of the exchequer hath ſignified to me this day, that yeſterday his majeſty called him to his coach, and ſaid to him, that one that had uſed ill ſpeech of me ſhould be called before me, and make his ſubmiſſion to me; and thereupon be called before the council, and receive a ſharp reprehenſion, and ſo be inlarged. And Mr. Chancellor could not tell me who the perſon was, but after by ſome letter he received from my lord Cliſton, and ſpeech with a man of his, he perceived it was he.

I pray your lordſhip in humbleneſs to let his majeſty know, that I little fear the lord Clifton, but I much fear the example, that it will animate ruffians and rodomonti extremely againſt the ſeats of juſtice (which are his majeſty's own ſeats) yea and againſt all authority and greatneſs, if this paſs without publick cenſure and example; it having gone already ſo far as that the perſon of a baron hath been committed to the Tower. The puniſhment it may pleaſe his majeſty to remit, and I ſhall not formally but heartily intercede for him: but an example (ſetting myſelf aſide) I wiſh for terror of perſons that may be more dangerous than he, towards the leaſt judge of the kingdom.

Therefore it may pleaſe his majeſty to ſpeak of it with myſelf and my lords, when he cometh next, and in the mean time I will command, from his majeſty, the maſter of the rolls, and Mr. Attorney, who were appointed by the table to examine him, to ſtay [a]. God ever proſper you.

Your Lordſhip's true friend and devoted ſervant,

March 17, 1617. FR. BACON, *Canc.*

[a] I know not whether there was any proſecution againſt the lord Clifton, or whether it was prevented by the laying of violent hands upon himſelf, in the year enſuing. *Stephens.*

CXCIX. To the Marquis of BUCKINGHAM.

My very good Lord,

WE have ſat once upon the commiſſion of treaſure to no ill purpoſe, as may appear by the account incloſed; wherein his majeſty will find no prepoſterous iſſue of treaſure: Mr. Chancellor imagines well, Coke ſeeks and beats over, as well where it is not, as where it is; ſecretary Naunton forgets nothing. I will look to bow things to the true ends. God bleſs and proſper his majeſty and yourſelf.

Your Lordſhip's moſt obliged friend and faithful ſervant,

25 July 1617. FR. VERULAM, *Canc.*

CC. To the Marquis of BUCKINGHAM.

My very good Lord,

I Pray your lordſhip to ſignify to his majeſty, that I thought it my duty to ſtay at the ſeal, a book of Sir Francis Steward's, and Sir James Auterlony, *etc.* of 200 *l.* land in charge in fee-ſimple: my reaſons,

Firſt, It is a perpetuity, and ſo much rent in diminution of revenue certain.

Secondly,

Secondly, The warrant (as is acknowledged) came only from my lord of Suffolk, and not from Mr. Chancellor. And yet my lord was wont to boaſt, that ſince he was treaſurer, all commiſſions and contracts for ſale of the king's land were broken off and ceaſed.

Thirdly, The rate of the moneys paid by the gentlemen amounteth but to thirteen years purchaſe; which is a plain gift of a good proportion of value.

If his majeſty, now informed, iterate his mandate, it is done, and I excuſed; but I could wiſh his majeſty would refer it to the commiſſioners of the treaſury, how the gentlemen may be otherwiſe ſatisfied.

I received yeſter-night a brave account of the commiſſion of the wards in Ireland, which this one year is advanced from 200 *l. per annum* to 4000 *l.* which is twenty fold multiplied. This I write for two reaſons. Firſt, Becauſe I glory in it, becauſe it was my work wholly: next, becauſe his majeſty may take occaſion by this to look better to the improvement of his wards in England in due time. God ever preſerve and proſper you.

Your Lordſhip's moſt obliged friend and faithful ſervant,

York-houſe, July 27, 1618. FR. VERULAM, *Canc.*

CCI. To the Marquis of BUCKINGHAM.

My very good Lord,

I Am very glad to hear of the honour his majeſty intendeth to my noble lady your lordſhip's [a] mother. This, amongſt many other things, ſheweth in your lordſhip good nature, which is the root of all virtues, next religion. Beſides, it doth ſort well in ſtates, when place and power do meet, and ſtand not too far at diſtance.

For the paſſing of it by direction without bill ſigned, it cannot be in law. So is Mr. Attorney's opinion, and ſo is mine; and therefore there is preſently a bill ſent with an indorſement of paſſing it by immediate warrant, and this antedate.

For the antedate, I muſt preſent his majeſty with my caution, and with my obedience.

18 H. VI. cap. 1. For the ſtatute tieth me from antedates; and indeed the miſchief is infinite: for by that means the king may grant any land, *etc.* and take it away a month hence, and grant it another by an antedate. And ſurely were it land or the like, I would not ſay *abſit*, or, Your majeſty cannot do it, for a world; or, Your majeſty is ſworn and I am ſworn; or ſuch brave phraſes: but ſurely (I ſay) I would in humbleneſs repreſent it to his majeſty [b].

But the caſe of honour differeth; for therein his majeſty's prerogative and declaration is abſolute, and he may make him that is laſt to be firſt. And therefore upon his majeſty's ſignification of his pleaſure upon the indorſement of the bill ſigned, I take it I may lawfully do it.

I am here rejoicing with my neighbours the towns-men of St. Albans, for this happy day, the [c] fifth of Auguſt, 1618.

Your Lordſhip's moſt obliged friend and faithful ſervant,

Gorhambury. FR. VERULAM, *Canc.*

CCII.

[a] The advancement of this lady to the title of the counteſs of Buckingham, was, notwithſtanding the reaſons here alledged, ſo ill reſented by the houſe of commons in 1626, that in article XI. of their impeachment of the duke her ſon, it was objected againſt him as one of his offences. *Stephens.*

[b] By this and the preceding letter it appears, that as my lord chancellor thought it his duty to offer to the king his reaſons againſt paſſing of a patent; yet if then the king, who was judge of the inconvenience, was pleaſed to command it, he was obliged to allow the ſame. But in thoſe things which were contrary to law, as it is to be preſumed, that after an humble repreſentation thereof, no prince would exact, ſo no miniſter in ſuch a caſe would yield an obedience. *Stephens.*

[c] The fifth of Auguſt, being the anniverſary of the king's deliverance from the earl of Gowry's conſpiracy, was by ſome called the court holy-day, and ridiculed as a fiction; tho' the truth thereof being delivered down by archbiſhop Spotſwood, and other good hiſtorians, I ſee no great reaſon to call it into queſtion. *Stephens.*

CCII. To the Marquis of BUCKINGHAM.

My very good Lord,

I Thank your lordſhip for your laſt loving letter. I now write to give the king an account of a patent I have ſtayed at the ſeal. It is of licence to give in mortmain eight hundred pound land, though it be of tenure in chief to [a] Allen that was the player, for an hoſpital.

I like well that Allen playeth the laſt act of his life ſo well; but if his majeſty give way thus to amortize his tenures, his courts of wards will decay; which I had well hoped ſhould improve.

But that which moved me chiefly is, that his majeſty now lately did abſolutely deny Sir Henry Savile for 200 *l.* and Sir Edward Sandys for 100 *l.* to the perpetuating of two lectures, the one in Oxford, the other in Cambridge, foundations of ſingular honour to his majeſty (the beſt learned of kings) and of which there is great want; whereas hoſpitals abound, and beggars [b] abound never a whit the leſs.

If his majeſty do like to paſs the book at all; yet if he would be pleaſed to abridge the 800 *l.* to 500 *l.* and then give way to the other two books for the univerſity, it were a princely work. And I would make an humble ſuit to the king, and deſire your lordſhip to join in it, that it might be ſo. God ever preſerve and proſper you.

Your Lordſhip's moſt obliged friend and faithful ſervant,

York-houſe, Aug. 18. 1618. FR. VERULAM, *Canc.*

I have written to my lord chamberlain, being chancellor of Oxford, to help in the buſineſs.

CCIII.

[a] That Allen the player, who founded an hoſpital at Dulwich in Surry, had been an excellent actor of the comical and ſerious part, will appear evident to any one that ſhall throughly conſider the following epigram made by that admirable dramatick poet Ben Johnſon.

To Mr. EDWARD ALLEN.

If Rome ſo great, and in her wiſeſt age,
Fear'd not to boaſt the glories of her ſtage:
As ſkilful Roſcius, and grave Æſop, men
Yet crown'd with honours, as with riches then;
Who had no leſs a trumpet of their name,
Than Cicero, whoſe ev'ry breath was fame:
How can ſo great example die in me?
That, Allen, I ſhould pauſe to publiſh thee;
Who both their graces in thy ſelf has more
Outſtript, than they did all that went before:
And preſent worth in all doſt ſo contract,
As others ſpeak, but only thou doſt act.
Wear this renown. 'Tis juſt that who did give
So many poets life, by one ſhould live.

[b] It were to be wiſhed this obſervation did not hold true to this day: for tho' the foundations of hoſpitals are to be commended, which Sir Fr. Bacon hath done both in this letter, and other his writings; yet it ſhews that ſome more adequate remedy for ſupporting the poor, than what ariſes from theſe charities, or even from the laws enacted for their relief, was then, and yet is to be deſired. And as the defect thereof is no ſmall reproach to the government of a country, happy in its natural product, and enriched by commerce; ſo it would be an act of the greateſt humanity, to provide for the poor, and that idleneſs and beggary, the ſucceſſive nurſery of rogues, might as far as poſſible be extirpated. Upon this occaſion I cannot but take notice of a ſtory which has been ſpread abroad to the defamation of Sir Fr. Bacon (tho' upon no good ground, as far as I can judge) as if in the accompliſhment of the foundation of the Chartreux hoſpital, begun by Mr. Sutton, and carried on by his executors, Sir Francis, who was then the king's ſolicitor, had, for ſome ill deſigns of gain to himſelf, or others, endeavoured to have defeated the ſame. The fact was, that the heir at law ſuppoſing, notwithſtanding what Mr. Sutton had done in procuring acts of parliament, and patents from the king, in order to eſtabliſh this noble charity, that the greateſt part of his eſtate was deſcended to him, it was argued on his behalf by the ſolicitor-general, by Mr. Henry Yelverton, and Mr. Walter, men of great reputation in thoſe times: and whatever ill intentions ſome of the court might have, my requeſt to the reader is, that before he paſs any cenſure upon Sir Francis Bacon, relating hereunto, he would pleaſe to peruſe his advice (printed in Vol. I.) given to the king touching Mr. Sutton's eſtate. *Stephens.*

CCIII. To the Marquis of BUCKINGHAM.

My very good Lord,

WHAT paſſed in your lordſhip's preſence, your lordſhip can tell, touching the navy. The morrow following we concluded in approbation of the books, ſave in one point, touching the number convenient for manning the ſhips, wherein the number allowed by the commiſſioners had, in my judgment, a little of the merchant; for to meaſure by ſo many as were above dead pays, is no good argument. For the abuſe of dead pays is to be amended, and not the neceſſary number abated. In this his majeſty may fall upon a middle proportion between that of the commiſſioners and that of the officers.

It were good, now the three books, which we have appointed to be ingroſſed into one leidger-book, are affirmed, there were a ſhort book of his majeſty's royal directions, and orders thereupon, extracted.

For the commiſſion of the treaſury, I perſuade myſelf, they are of the firſt hours that have been well ſpent in that kind. We have put thoſe particulars, whereof his majeſty gave us charge, into a way.

Bingley's information will be to good purpoſe, and we find another of like nature revealed to Mr. Secretary and myſelf. God ever proſper you.

Your Lordſhip's moſt obliged friend and faithful ſervant,

9 October, 1618. FR. VERULAM, *Canc.*

CCIV. To the Marquis of BUCKINGHAM.

My very good Lord,

LOOKING for matter of ſervice, I have found out a ſuit for myſelf; and it is proper for me more than all men, becauſe it is within the account of the hanaper. But I have made a law to myſelf, that I will never beg any thing which ſhall not bring gain to the king. Therefore my ſuit is, to farm the profits of the alienations, yielding a thouſand pound a year more to the king than hath been yielded *communibus annis*, by a *medium* of ſeven years. If the king be pleaſed to grant me this, it will a little warm the honour he hath given me; and I ſhall have a new occaſion to be, as I ever have been, and ſhall be,

Your Lordſhip's obliged friend and faithful ſervant,

York-houſe, Octob. 9. 1618. FR. VERULAM, *Canc.*

CCV. To the Marquis of BUCKINGHAM.

My very good Lord,

THIS morning Mr. Attorney came to me, and deſired of me many writs of *Ne exeat regnum* againſt moſt of the Dutch merchants *, and withal

* The affair of theſe Dutch merchants is in ſome meaſure repreſented in this letter, and thoſe of Octob. 9, and Nov. 9. 1619. But Mr. Stephens in his Introduction, p. 45, 46. gives us, by the aſſiſtance of ſome authentick papers, the following account of the affair: Upon the 19th of Octob. 1618, the attorney-general having applied to the lord chancellor for writs *Ne exeat regnum*, againſt theſe merchants, afterwards exhibited an information againſt about one hundred and eighty of them, for tranſporting beyond the ſeas vaſt quantities of gold and ſilver in money, plate, and bullion, ſince the beginning of king James I's reign. The attorney at firſt brought the cauſe to an hearing againſt about twenty of them, who were ſuppoſed the greateſt offenders, and moſt able to make reſtitution. Their fines amounting in the whole to 150000 *l.* of which Mr. William Courteen, and two others, were condemned in 20000 *l.* each; the advice which the lord chancellor gave the king, not to grant away the fines of ſuch ten of them as Sir Thomas Vavaſor the diſcoverer ſhould chuſe, and which it ſeems he had in a manner been promiſed, was a piece of ſervice worthy the place he enjoy'd, and the truſt he had with the king. Upon the 12th of October 1619, Mr. Courteen was cenſured to pay 2000 *l.* more, and others, ſmaller ſums, for endeavouring to corrupt the king's evidence. And the 19th of November following was appointed for the trial of between twenty and thirty more; but by reaſon of ſome neglect or miſmanagement in the proſecution, which gave the court a great deal of trouble, and the defendants ſome advantage, the cauſe was not heard till the 7th of December, tho' moſt of them were then found guilty. Of the large fines impoſed upon the delinquents, it is ſuppoſed that they paid but a third part; for during the proſecution, the States General did by a letter deſire

withal let me underſtand that there was a diſcovery of an infinite tranſportation of gold and ſilver out of this realm by the ſaid Dutch merchants, amounting to millions; and that Sir John Brittain had made a book thereof, and preſented the ſame to his majeſty: and farther, that his majeſty had directed him to proſecute the ſame; and had alſo given Sir Thomas Vavaſor the forfeiture of ſuch ten of them as he ſhould chuſe.

Hereupon I thought it my duty, as in a matter of great weight, to ſignify to his majeſty by your lordſhip what I conceive.

The diſcovery I think very happy. For if it be true, it will be a great benefit to his majeſty: it will alſo content his people much, and it will demonſtrate alſo that Scotland is not the leech (as ſome diſcourſers ſay) but the Netherlanders, that ſuck the realm of treaſure. So that the thing is very good.

But two things I muſt repreſent to his majeſty; the firſt, that if I ſtay merchants from their trading, by this writ, I muſt do it either *ex officio*, or by ſpecial warrant from his majeſty.

If *ex officio*, then I muſt have more than a bare ſurmiſe to grant the writ upon, ſo as I muſt be acquainted with the grounds, or at leaſt appearance of proofs. If by ſpecial warrant, then I deſire to receive the ſame. The other is, that I humbly beſeech his majeſty that theſe royal boughs of forfeiture may not be vintaged, or crop'd by private ſuitors (conſidering his majeſty's ſtate as it is) but that Sir Thomas Vavaſor, or Sir John Brittain, may have a bountiful and gracious reward for their diſcovery; but not the prime, or without ſtint.

In ſum, I would wiſh his majeſty to refer the whole buſineſs, and carriage of the ſame for his honour and profit, to the commiſſioners of treaſury; or becauſe it is a legal forfeiture, to myſelf, Mr. Chancellor, Sir Edward Coke, and my lord chief juſtice of England: and by us his majeſty ſhall be aſſured to know the beſt courſe for his juſtice, honour, and profit, and that he may diſpoſe what bounty he will. God ever preſerve and proſper you,

Your Lordſhip's moſt obliged friend and faithful ſervant,

York-houſe, Octob. 19. 1618. FR. VERULAM, *Canc.*

deſire the marquis of Buckingham to endeavour to moderate the heat thereof, as Sir Noel Carſon their embaſſador did the next day after ſentence, to mitigate the ſeverity.

CCVI. To the Lord Chancellor.

My Lord,

I Have acquainted his majeſty with your letter, who giveth you thanks for your advice to communicate the buſineſs of the Dutchmen to the commiſſioners of the treaſury, which his majeſty was before purpoſed to refer to them, as it concerns his treaſure, for the carriage of it; and to your lordſhip and the reſt named in your letter, for the relation it hath to the law. For the propoſers of the ſuit, his majeſty intendeth only to reward their pains as may ſtand with his ſervice and his princely diſpoſition, but to preſerve the main benefit himſelf: all that his majeſty would have your lordſhip to do for the preſent, is to take order about the writ of *Ne exeant regnum*; to adviſe with his learned counſel what courſe is to be taken, and if by a warrant from his majeſty, that your lordſhip ſend him a warrant to be ſigned, which ſhall be returned with all ſpeed. Of other things his majeſty thinketh it will be time enough to ſpeak at his return to London. In the mean time I reſt,

Your Lordſhip's faithful friend and ſervant,

Hinchenbroke, 21 Octob. 1618. G. BUCKINGHAM.

CCVII.

CCVII. To the Marquis of Buckingham.

My very good Lord,

I Have this morning received the petty roll for the ſheriffs. I received alſo the papers exhibited by Sir Miles Fleetwood, which I will uſe to his majeſty's beſt ſervice, and thereupon give account to his majeſty when time ſerveth.

My care, which is not dormant touching his majeſty's ſervice, eſpecially that of treaſure (which is now *ſumma ſummarum)* maketh me propound to his majeſty a matter, which (God is my witneſs) I do without contemplation of friend or end, but *animo recto.*

If Sir Edward Coke continue ſick, or keep in, I fear his majeſty's ſervice will languiſh too, in thoſe things which touch upon law; as the calling in debts, recuſants, alienations, defalcations, etc. And this is moſt certain, that in theſe new diligences, if the firſt beginning cool, all will go back to the old byas. Therefore it may pleaſe his majeſty to think of it, whether there will not be a kind of neceſſity to add my lord chief juſtice of England to the commiſſioners of treaſure. This I move only to the king and your lordſhip, otherwiſe it is a thing *ex non entibus.* God preſerve and proſper you.

Your Lordſhip's moſt faithful ſervant,

From the Star-Chamber,
25 Nov. 1618.

Fr. Verulam, *Canc.*

P. S. I forget not Tufton's cauſe. All things ſtay, and precedents are in ſearch.

CCVIII. To the Marquis of Buckingham.

My very good Lord,

THIS long book, which I ſend for his majeſty's ſignature, was upon a conference and conſult yeſternight (at which time I was aſſiſted by the two chief juſtices, and attended by the ſurveyor, attorney, and receiver of the court of wards, Fleetwood) framed and allowed.

It is long, becauſe we all thought fit not to piece new inſtructions with old inſtructions, but to reduce both old and new into one body of inſtructions. I do not ſee that of the articles, which are many, any could have been ſpared. They are plain, but they have a good property, that they will take faſt hold. I may not trouble his majeſty with chuſing ſome of them in particular, when all are good: only I think fit to let his majeſty know of one, which is, that according to his own directions, the oath of making no private unlawful profit is now as well tranſlated to the maſter and officers that may take, as to the parties and ſuitors that may give.

It little becometh me to poſſeſs his majeſty that this will be to his majeſty's benefit ten thouſands yearly, or fifteen thouſands, or twenty thouſands: for theſe rattles are fitter for mountebanks of ſervice, than grave counſellors. But my advices (as far as I am able to diſcern) tend or extend but to thus much: this is his majeſty's ſureſt and eaſieſt way for his moſt good.

Sir Miles Fleetwood, who both now and heretofore hath done very good ſervice in this, meriteth to be particularly from your lordſhip encouraged; which I beſeech your lordſhip not to forget. God ever proſper you.

Your Lordſhip's moſt faithful bounden friend and ſervant,

Dec. 4. 1618.

Fr. Verulam, *Canc.*

CCIX. To the KING.

May it pleaſe your moſt excellent Majeſty,

ACCORDING to your Majeſty's pleaſure, ſignified to us by the lord marquis Buckingham, we have conſidered of the fitneſs and conveniency of the gold and ſilver thread buſineſs, as alſo the profit that may accrue unto your Majeſty.

We are all of opinion that it is convenient that the ſame ſhould be ſettled, having been brought hither at the great charge of your Majeſty's now agents, and being a means to ſet many of your poor ſubjects on work; and to this purpoſe there was a former certificate to your Majeſty from ſome of us with others.

And for the profit that will ariſe, we ſee no cauſe to doubt; but do conceive apparent likelihood, that it will redound much to your Majeſty's profit, which we eſteem may be at the leaſt 10,000*l.* by the year; and therefore in a buſineſs of ſuch benefit to your Majeſty, it were good it were ſettled with all convenient ſpeed, by all lawful means that may be thought of, which, notwithſtanding, we moſt humbly leave to your Majeſty's higheſt wiſdom.

Your Majeſty's moſt humble and faithful ſervants,

FR. VERULAM, *Canc.* H. MONTAGU. HENRY YELVERTON.

4 Oct. 1618. The marquis of Buckingham writes from Theobalds to the lord chancellor, that the king being deſirous to be ſatisfied of the gold and ſilver thread buſineſs, would have his lordſhip conſult the lord chief juſtice, and the attorney and ſolicitor-general therein.

CCX. To the KING.

It may pleaſe your moſt excellent Majeſty,

I DO many times with gladneſs, and for a remedy of my other labours, revolve in my mind the great happineſs which God (of his ſingular goodneſs) hath accumulated upon your Majeſty every way; and how complete the ſame would be, if the ſtate of your means were once rectified, and well ordered: Your people military and obedient, fit for war, uſed to peace; your church illightened with good preachers, as an heaven of ſtars; your judges learned, and learning from you, juſt, and juſt by your example; your nobility in a right diſtance between crown and people, no oppreſſors of the people, no over-ſhadowers of the crown; your council full of tributes of care, faith, and freedom; your gentlemen and juſtices of peace willing to apply your royal mandates to the nature of their ſeveral counties, but ready to obey; your ſervants in awe of your wiſdom, in hope of your goodneſs; the fields growing every day, by the improvement and recovery of grounds from the deſert to the garden; the city grown from wood to brick; your ſea-walls or *pomoerium* of your iſland ſurveyed, and in edifying; your merchants embracing the whole compaſs of the world, eaſt, weſt, north, and ſouth; the times give you peace, and yet offer you opportunities of action abroad: and laſtly, your excellent royal iſſue entaileth theſe bleſſings and favours of God to deſcend to all poſterity. It reſteth therefore, that, God having done ſo great things for your Majeſty, and you for others, you would do ſo much for yourſelf, as to go through (according to your good beginnings) with the rectifying and ſettling of your eſtate and means, which only is wanting; *hoc rebus deſuit unum.* I therefore, whom only love and duty to your Majeſty, and your royal line, hath made a financier, do intend to preſent unto your Majeſty a perfect book of your eſtate, like a perſpective glaſs, to draw your eſtate nearer to your ſight; beſeeching your Majeſty to conceive, that if I have not attained to do that that I would do, in this which is not proper for me, in my element I ſhall make your Majeſty amends in ſome other thing, in which I am better bred. God ever preſerve, etc.

Jan. 2. 1618.

CCXI. To the Marquis of Buckingham.

My very good Lord,

IF I ſhould uſe the count de Gondomar's action, I ſhould firſt lay your laſt letter to my mouth, in token of thanks, and then to my heart in token of contentment, and then to my forehead in token of a perpetual remembrance.

I ſend now to know how his majeſty doth after his remove, and to give you account, that yeſterday was a day of motions in the chancery. This day was a day of motions in the ſtar-chamber, and it was my hap to clear the bar, that no man was left to move any thing, which my lords were pleaſed to note they never ſaw before. To-morrow is a ſealing day; Thurſday is the funeral day; ſo that I pray your lordſhip to direct me whether I ſhall attend his majeſty Friday or Saturday. Friday hath ſome reliques of buſineſs, and the commiſſioners of treaſure have appointed to meet; but to ſee his majeſty, is to me above all.

I have ſet down *de bene eſſe*, Suffolk's cauſe, the third ſitting next term; if the wind ſuffer the commiſſion of Ireland to be ſped. I ever more and more reſt

Your Lordſhip's moſt obliged friend and faithful ſervant,

This 11th of May 1619. Fr. Verulam, *Canc.*

CCXII. To the Lord Chancellor.

My moſt honourable Lord,

I Acquainted his majeſty with your letter, at the firſt opportunity after I received it, who was very well pleaſed with that account of your careful and ſpeedy diſpatch of buſineſſes, *etc.*

Yours, etc.

Greenwich, 13 May 1619. G. Buckingham.

P. S. Your buſineſs had been done before this, but I knew not whether you would have the attorney or ſolicitor to draw it.

CCXIII. To the Lord Chancellor.

My noble Lord,

I Shewed your letter of thanks to his majeſty, who ſays there are too many in it for ſo ſmall a favour, which he holdeth too little to encourage ſo well a deſerving ſervant. For myſelf, I ſhall ever rejoice at the manifeſtation of his majeſty's favour towards you, and will contribute all that is in me to the increaſing his good opinion; ever reſting

Your Lordſhip's faithful friend and ſervant,

G. Buckingham.

CCXIV. To my very loving friends Sir Thomas Leigh and Sir Thomas Puckeringe, knights and baronets.

AFTER my hearty commendations; being informed by the petition of one Thomas Porten, a poor Yorkſhireman, of a heavy accident by fire, whereby his houſe, his wife, and a child, together with all his goods, were utterly burnt and conſumed; which misfortune, the petitioner ſuggeſts (with much eagerneſs) was occaſioned by the wicked practices and conjurations of one John Clarkſon of Rowington in the county of Warwick, and his daughter

(perſons of a wandering condition) affirming, for inſtance, that one Mr. Hailes of Warwick did take from the ſaid Clarkſon certain books of conjuration and witchcraft: that the truth of the matter may be rightly known, and that Clarkſon and his daughter (if there be ground for it) may anſwer the law according to the merit of ſo heinous a fact, I have thought good to wiſh and deſire you to ſend for Clarkſon, and his daughter, and as upon due examination you ſhall find cauſe, to take order for their forthcoming, and anſwering of the matter at the next aſſize for the county of York; and alſo to confer with Mr. Hailes, whether he took from the ſaid Clarkſon any ſuch book of conjuration, as the petitioner pretends he did, and to ſee them in ſafe cuſtody. Whereupon I deſire to be certified how you find the matter; and your doing thereupon. So not doubting of your ſpecial care and diligence herein, I bid you heartily farewell, and reſt

Your very loving friend,

York-houſe, 15 May 1619. FR. VERULAM, *Canc.*

CCXV. To the Marquis of BUCKINGHAM.

My very good Lord,

I Send his majeſty a volume of my lord of Bangor's and my lord Sheffield, whereof I ſpake when I left his majeſty at Theobalds. His majeſty may be pleaſed, at his own good time and pleaſure, to caſt his eye upon it. I purpoſe at my coming to London to confer with the chief juſtice as his majeſty appointed; and to put the buſineſs of the purſevants in a way, which I think will be beſt by a commiſſion of Oyer and Terminer; for the ſtar-chamber (without confeſſion) is long ſeas. I ſhould adviſe that this point of the purſevants were not ſingle, but that it be coupled in the commiſſion with the offences of keepers of priſons hereabouts: it hath a great affinity; for purſevants are but ambulatory keepers, and it works upon the ſame party (of the papiſts) and it is that wherein many of his majeſty's and the council's ſevere charges have been hitherto unfruitful; and it doth a great deal of miſchief. I have ſome other reaſons for it. But of this it will be fitteſt to advertiſe more particularly, what I have reſolved of on advice, upon conference with the chief juſtice. I am wonderful glad to hear of the king's good health. God preſerve his majeſty and your lordſhip. I ever reſt

Your Lordſhip's moſt obliged friend and faithful ſervant,

Gorhambury, this laſt of July 1619. FR. VERULAM, *Canc.*

CCXVI. To the Lord Chancellor.

My honourable Lord,

YOUR lordſhip hath ſent ſo good news to his majeſty, that I could have wiſhed you had been the reporter of it yourſelf; but ſeeing you came not, I cannot but give you thanks for employing me in the delivering of that which pleaſed his majeſty ſo well, whereof he will put your lordſhip in mind, when he ſeeth you. I am glad we are come ſo near together, and hoping to ſee you at Windſor, I reſt

Your Lordſhip's faithful friend and ſervant,

29 Aug. 1619. G. BUCKINGHAM.

CCXVII.

CCXVII. To the Lord Chancellor.

My honourable Lord,

AS I was reading your lordſhip's letter, his majeſty came, and took it of my hands, when he knew from whom it came, before I could read the paper incloſed; and told me that you had done like a wiſe counſellor: firſt ſetting down the ſtate of the queſtion, and then propounding the difficulties, the reſt being to be done in its own time.

I am glad of this occaſion of writing to your lordſhip, that I may now let your lordſhip underſtand his majeſty's good conceit and acceptation of your ſervice, upon your diſcourſe with him at Windſor, which though I heard not myſelf, yet I heard his majeſty much commend it both for the method and the affection you ſhewed therein to his affairs, in ſuch earneſt manner, as if you made it your only ſtudy and care to advance his majeſty's ſervice. And ſo I reſt

Your Lordſhip's faithful friend and ſervant,

Wanſtead, 9 Sept. 1619. G. BUCKINGHAM.

CCXVIII. To the Marquis of BUCKINGHAM.

My very good Lord,

I Think it my duty to let his majeſty know what I find in this cauſe of the *ore tenus*. For as his majeſty hath good experience, that when his buſineſs comes upon the ſtage, I carry it with ſtrength and reſolution; ſo in the proceedings I love to be wary and conſiderate.

I wrote to your lordſhip by my laſt, that I hoped by the care I had taken, the buſineſs would go well, but without that care I was ſure it would not go well. This I meant becauſe I had had conference with the two chief juſtices, Sir Edward Coke being preſent, and handled the matter ſo, that not without much ado I left both the chief juſtices firm to the cauſe and ſatisfied.

But calling to mind that in the main buſineſs, notwithſtanding I and the chief juſtices went one way, yet the day was not good (and I ſhould be loth to ſee more of ſuch days) I am not without ſome apprehenſion. For though we have Sir Edward Coke earneſt and forward, inſomuch as he adviſed the *ore tenus*, before I knew it at Wanſtead, and now bound the Dutchmen over to the ſtar-chamber, before I was made privy; unto both which proceedings I did nevertheleſs give approbation: yet if there ſhould be either the major part of the votes the other way, or any main diſtraction, though we bear it through, I ſhould think it a matter full of inconvenience. But that which gives me moſt to think, is the carriage of Mr. Attorney, which ſorteth neither with the buſineſs, nor with himſelf: for, as I hear from divers, and partly perceive, he is fallen from earneſt, to be cool and faint: which weakneſs, if it ſhould make the like alteration at the bar, it might overthrow the cauſe. All the remedy which is in my power, is by the advice of the judges to draw ſome other of the learned counſel to his help; which he, I know, is unwilling with, but that is all one.

This I thought it neceſſary to write, leſt the king ſhould think me aſleep, and becauſe I know that his majeſty's judgment is far better than mine. But I, for my part, mean to go on roundly; and ſo I ever reſt

Your Lordſhip's moſt obliged friend and faithful ſervant,

Octob. 9. 1619. FR. VERULAM, *Canc.*

If the king in his great wiſdom ſhould any ways incline to have the *ore tenus* put off, then the way were, to command that the matter of the *ore tenus* ſhould be given in evidence, by way of aggravation in the main cauſe. And

it is true, that if this precuſſory matter goeth well, it giveth great entrance into the main cauſe; if ill, contrariwiſe, it will do hurt and diſadvantage to the main.

CCXIX. To the Lord Chancellor.

My honourable Lord,

THE news of this victory hath ſo well pleaſed his majeſty, that he giveth thanks to all; and I among the reſt, who had no other part, but the delivering of your letter, had my part of his good acceptation, which he would have rewarded after the Roman faſhion with every man a garland, if it had been now in uſe; but after the faſhion of his gracious goodneſs, he giveth your lordſhip thanks: and would have you deliver the like in his majeſty's name to Sir Edward Coke, and the judges. Your news which came the firſt, gave his majeſty a very good breakfaſt, and I hope his health will be the better after it.

Your Lordſhip's faithful friend and ſervant,

14 Oct. 1619. G. BUCKINGHAM.

This letter was indorſed,

Thanks on the ſucceſs in the ore tenus *againſt the Dutch.*

CCXX. To the Marquis of BUCKINGHAM.

My very good Lord,

THESE things which I write now and heretofore in this cauſe, I do not write ſo, as any can take knowledge that I write; but I diſpatch things *ex officio* here, and yet think it fit inwardly to advertiſe the king what doth occur. And I do aſſure your lordſhip, that if I did ſerve any king whom I did not think far away wiſer than myſelf, I would not write in the midſt of buſineſs, but go on of myſelf.

This morning, notwithſtanding my ſpeech yeſterday with the duke *, he delivered this letter incloſed, and I having cleared the room of all ſave the court, and learned counſel (whom I required to ſtay) the letter was read a little before our hour of ſitting. When it was read, Mr. Attorney began to move, that my lord ſhould not acknowledge his offences as he conceived he had committed them, but as they were charged; and ſome of the lords ſpeaking to that point, I thought fit to interrupt and divert that kind of queſtion; and ſaid, before we conſidered of the extent of my lord's ſubmiſſion, we were firſt to conſider of the extent of our own duty and power; for that I conceived it was neither fit for us to ſtay proceeding, nor to move his majeſty in that which was before us in courſe of juſtice: unto which (being once propounded by me) all the lords and the reſt *una voce* aſſented. I would not ſo much as aſk the queſtion, whether, though we proceeded, I ſhould ſend the letter to his majeſty, becauſe I would not ſtraiten his majeſty in any thing.

* Of Lenox.

The evidence went well (I will not ſay I ſometime holp it, as far as was fit for a judge) and at the riſing of the court, I moved their lordſhips openly, whether they would not continue this cauſe from day to day till it were ended; which they thought not fit, in regard of the general juſtice which would be delayed in all courts. Yet afterwards within I prevailed ſo far, as we have appointed to ſit Wedneſday, Thurſday, and Friday, and to ſit by eight of the clock, and ſo to diſpatch it before the king come, if we can. God preſerve and proſper you. I ever reſt

Your Lordſhip's moſt obliged friend and faithful ſervant,

This 22 October, Friday at 4 of the clock, 1619. FR. VERULAM, *Canc.*

CCXXI. To the Lord Chancellor.

My honourable Lord,

I Have received your letters by both your ſervants, and have acquainted his majeſty with them, who is exceedingly pleaſed with the courſe you have held in the earl of Suffolk's buſineſs, and holdeth himſelf ſo much the more beholden to you, becauſe you ſent the letter of your own motion, without order or conſent of the lords, whereby his majeſty is not tyed to an anſwer. His majeſty hath underſtood by many, how worthily your lordſhip hath carried yourſelf both in this and the Dutch buſineſs; for which he hath commanded me to give you thanks in his name, and ſeeth your care to be ſo great in all things that concern his ſervice, that he cannot but much rejoice in the truſt of ſuch a ſervant, which is no leſs comfort to

Your Lordſhip's faithful friend and ſervant,

Royſton, 23 Oct. 1619. G. BUCKINGHAM.

Indorſed thus,

On my lord of Bucks incloſing a letter of ſubmiſſion from my lord of Suffolk.

CCXXII. To the Marquis of BUCKINGHAM.

My very good Lord,

MY lord of Suffolk's cauſe is this day ſentenced. My lord and his lady fined together at 30,000 *l.* with impriſonment in the Tower at their own charge. Bingley at 2000 *l.* and committed to the Fleet. Sir Edward Coke did his part, I have not heard him do better, and began with a fine of 100,000 *l.* but the judges firſt, and moſt of the reſt, reduced it as before. I do not diſlike that things paſſed moderately; and, all things conſidered, it is not amiſs, and might eaſily have been worſe.

There was much ſpeaking of interceding for the king's mercy; which, in my opinion, was not ſo proper for a ſentence. I ſaid in concluſion, that mercy was to come *ex mero motu*, and ſo left it: I took ſome other occaſion pertinent to do the king honour, by ſhewing how happy he was in all other parts of his government, ſave only in the manage of his treaſure by his officers.

I have ſent the king a new bill for Suſſex; for my lord of Nottingham's certificate was true, and I told the judges of it before; but they neglected it. I conceive the firſt man, which is newly ſet down, is the fitteſt. God ever preſerve and proſper you.

Your Lordſhip's moſt obliged friend and faithful ſervant,

Nov. 13. 1619. FR. VERULAM, *Canc.*

CCXXIII. To the Marquis of BUCKINGHAM.

My very good Lord,

I Do not love to interlope by writing in the midſt of buſineſs: but becauſe his majeſty commanded me to acquaint him with any occurrence which might croſs the way, I have thought fit to let his majeſty know what hath paſſed this day.

This day (which was the day ſet down) the great cauſe of the Dutchmen was enter'd into. The pleading being open'd, and the caſe ſtated by the counſel; the counſel of the defendants made a motion to have certain examinations taken concerning the old defendants ſuppreſſed, becauſe they were taken ſince the laſt hearing.

I ſet the buſineſs in a good way, and ſhewed they were but ſupplemental, and that at the laſt hearing there were ſome things extrajudicial alledged *ad infirmandum conſcientiam judicis*, and therefore there was more reaſon theſe ſhould be

be uſed *ad informandum conſcientiam judicis*, and that there was order for it. The order was read, and approved both by the court, and the defendant's own counſel; but it was alledged, that the order was not enter'd time enough, whereby the defendants might likewiſe examine: wherein certainly there was ſome ſlip or forgetfulneſs in Mr. Attorney or Brittain that followed it, which I wiſh had been otherwiſe; yet it went fair out of the court.

But after dinner my lords were troubled about it, and after much diſpute we have agreed to confer ſilently and *ſine ſtrepitu* to-morrow, and ſet all ſtraight, calling the judges, and the learned counſel, with whom I have ſpoken this evening, I think, to good purpoſe. For in good faith I am fain to be *omnibus omnia*, as St. Paul ſaith, to ſet forward his majeſty's ſervice.

I diſcern a kind of inclination to take hold of all accidents to put off the cauſe, whereunto neither I ſhall give way, nor I hope his majeſty; to-morrow, if cauſe be, I ſhall write more, but I hope all ſhall be well. I ever reſt

Your Lordſhip's moſt obliged friend and faithful ſervant,

Friday night, Nov. 19. 1619. FR. VERULAM, *Canc.*

CCXXIV. To the Marquis of BUCKINGHAM.

My very good Lord,

I Have conferred with Sir Lionel Cranfield, according to his majeſty's ſpecial commandment, touching two points of value, for the advancement (the one preſent, the other ſpeedy) of his majeſty's revenue.

The firſt is of the currants, to reſtore the impoſition of five ſhillings ſix pence, laid in the late queen's time, and drawn down unduly, to ſerve private turns, to three ſhillings four pence; which will amount to above three thouſand pounds yearly increaſe.

The other is of the tobacco, for which there is offer'd 2000 *l.* increaſe yearly, to begin at Michaelmas next, as it now is, and 3000 *l.* increaſe, if the plantations of tobacco here within land be reſtrained.

I approve, in mine own judgment, both propoſitions, with theſe cautions: That for the firſt the farmers of the currants do by inſtrument under their ſeals relinquiſh to the king all their claim thereto by any general words of their patent. And for the ſecond, that the bargain be concluded and made before the proclamation go forth; wherein perhaps there will occur ſome doubt in law, becauſe it reſtraineth the ſubject in the employment of his freehold at his liberty. But being ſo many ways *pro bono publico*, I think it good enough.

His majeſty may therefore be pleaſed to write his letter to the commiſſioners of the treaſury, ſignifying his majeſty's pleaſure directly in both points to have them done, and leaving to us the conſideration *de modo*. God ever proſper you. I reſt

Your Lordſhip's moſt obliged friend and faithful ſervant,

Nov. 22. 1619. FR. VERULAM, *Canc.*

CCXXV. To the Marquis of BUCKINGHAM.

My very good Lord,

I Send the ſubmiſſion of Sir Thomas Lake, drawn in ſuch form as upon a meeting with me of the chief juſtices, and the learned counſel, was conceived agreeable to his majeſty's meaning and directions; yet leſt we ſhould err, we thought good to ſend it to his majeſty. It is to be returned with ſpeed, or elſe there will be no day in court to make it. God bleſs and proſper you. I reſt

Your Lordſhip's moſt obliged friend and faithful ſervant,

28 Nov. 1619. FR. VERULAM, *Canc.*

CCXXVI. To the Lord Chancellor.

My honourable Lord,

I Have acquainted his majeſty with your lordſhip's letter, and with the ſubmiſſion you ſent drawn for Sir Thomas Lake, which his majeſty liketh well; and, becauſe he ſerved him in ſo honourable a place, is graciouſly pleaſed that he maketh ſubmiſſion in writing, ſo that my lady of Exeter be contented and the lords, whom his majeſty would have you acquaint therewith. And ſo I reſt

Your Lordſhip's faithful friend and ſervant,

Newmarket, 29 Nov. 1619. G. BUCKINGHAM.

CCXXVII. To the Marquis of BUCKINGHAM.

My very good Lord,

WE ſentence to-morrow, but I write to day, becauſe I would not leave the king in ſuſpenſe.

I ſhall write, not ſo good news as I would, but better than I expected.

We met amongſt ourſelves to-day, which I find was neceſſary, more than convenient. I gave aim that the meeting was not to give a privy verdict, or to determine what was a good proof or not a good proof, nor who was guilty or not guilty, but only to think of ſome fit proportion of the fines, that there mought be leſs diſtraction in the ſentence, in a cauſe ſo ſcattered. Some would have entered into the matter itſelf, but I made it good, and kept them from it.

I perceive the old defendants will be cenſured, as well as the new (which was the gole) and I am perſuaded the king will have a great deal of honour of the cauſe. Their fines will be moderate, but far from contemptible. The attorney did very well to-day; I perceive he is a better pleader than a director, and more eloquent than conſiderate.

Little thinks the king what ado I have here, but I am ſure I acquit my truſt. To-morrow I will write particularly. God ever preſerve you.

Your Lordſhip's moſt obliged friend and faithful ſervant,

Tueſday afternoon, this 7th Dec. 1619. FR. VERULAM, *Canc.*

The marquis of Buckingham writes that he had acquainted his majeſty with this letter, who commanded him to give the lord chancellor thanks for his ſpeed in advertiſing thoſe things that paſs, and for the great care he ever ſeeth his lordſhip has in his ſervice.

CCXXVIII. To the Lord Chancellor.

My Lord,

HIS majeſty having ſeen in this great buſineſs your exceeding care and diligence in his ſervice by the effect which hath followed thereupon, hath commanded me to give you many thanks in his name, and to tell you that he ſeeth you play the part of all in all, etc.

Yours, etc.

Newmarket, 10 Dec. 1619. G. BUCKINGHAM.

Indorſed,

In the Dutch cauſe.

CCXXIX. To the Marquis of BUCKINGHAM.

My very good Lord,

TO keep form, I have written immediately to his majeſty of juſtice Croke's death, and ſend your lordſhip the letter open, wiſhing time were not loſt. God preſerve and proſper you.

Your Lordſhip's ever,

24 Jan. 1619. FR. VERULAM, *Canc.*

CCXXX. To the Marquis of BUCKINGHAM.

My very good Lord,

I Doubt not but Sir Giles Montpeſſon advertiſeth your lordſhip how our revenue buſineſs proceeds. I would his majeſty had reſted upon the firſt names; for the additionals, ſpecially the exchequer man, doth not only weaken the matter, but weakeneth my forces in it, he being thought to have been brought in acroſs. But I go on, and hope good ſervice will be done.

For the commiſſions to be publiſhed in the ſtar-chamber, for which it pleaſeth his majeſty to give me ſpecial thanks, I will have ſpecial care of them in time. God ever proſper you.

Your Lordſhip's moſt obliged friend and faithful ſervant,

10th Feb. 1619. FR. VERULAM, *Canc.*

CCXXXI. To the KING.

May it pleaſe your moſt excellent Majeſty,

ACCORDING to your commandment, we met together yeſterday at Whitehall, and there conſulted what courſe were fitteſt to be taken now in this buſineſs of your majeſty's attorney-general, both for the ſatisfying your own honour, as alſo for calling in the late exorbitant charter of the city; which are the two ends, as we conceive, that your Majeſty propoſe unto yourſelf.

To effect both which, we humbly preſume to preſent thus much unto your Majeſty as our opinion. Firſt, that an information be put into the ſtar-chamber, as we formerly adviſed, againſt your attorney as delinquent, againſt the mayor, etc. as intereſſed, and againſt the recorder alſo, mixtly with ſome touch of charge.

That the ſubmiſſion by letter offer'd by Mr. Attorney is no way ſatisfactory for your Majeſty's honour; but is to be of record by way of anſwer, and deduced to more particulars.

That any ſubmiſſion or ſurrender of the patents by the city ſhould be alſo of record in their anſwer; and no other can be receiv'd with your Majeſty's honour, but by anſwer in court: the ſame to come merely of themſelves, without any motion on your Majeſty's behalf, directly or indirectly; which being done in this form, it will be afterwards in your Majeſty's choice and pleaſure to uſe mercy, and to ſuſpend any farther proceedings againſt your attorney.

That it is of neceſſity as well for the putting in of this information, as for your Majeſty's other urgent and publick ſervices in that and other courts, to have a ſequeſtration preſently of your attorney, and a proviſional commiſſion to ſome other, during your Majeſty's pleaſure, to execute that charge. For both which, inſtruments legal ſhall be provided as ſoon as your Majeſty's pleaſure is known. To which we humbly and dutifully ſubmit our advice and opinion, beſeeching God to bleſs your Majeſty's ſacred perſon with continuance and increaſe of much health and happineſs: wherewith, humbly kiſſing your royal hands, we reſt

Your Majeſty's moſt humble, and faithful ſubjects and ſervants,

At your Majeſty's Palace of Whitehall, June 16, 1620.

FR. VERULAM, *Canc.* GEO. CALVERT,
T. ARUNDEL, JUL. CÆSAR,
ROBERT NAUNTON, EDW. COKE.

CCXXXII. To the Marquis of Buckingham.

My very good Lord,

I Have lately certified his majeſty on the behalf of Sir George Chaworth, by ſecretary Calvert, touching the place of a remembrancer in the chancery for ſetting down of cauſes. And becauſe the gentleman telleth me, the king thought my certificate a little doubtful; he deſired me to write to your lordſhip, touching my approbation more plainly. It is true, that I conceive it to be a good buſineſs, and will be for the ſervice of the court, and eaſe of the ſubject; I will look it ſhall be accompanied with good cautions.

We ruffle over buſineſs here in council apace, and I think to reaſonable good purpoſe. By my next I will write of ſome fit particulars. I ever reſt

Your moſt obliged friend and faithful ſervant,

June 21. 1620. Fr. Verulam, *Canc.*

CCXXXIII. To the Marquis of Buckingham.

My very good Lord,

THE tobacco buſineſs is well ſettled in all points. For the coals, they that brought the offer to ſecretary Calvert, do very baſely ſhrink from their words; but we are caſting about to piece it and perfect it. The two gooſe-quills Maxwell and Alured have been pulled, and they have made ſubmiſſions in that kind which the board thought fit: for we would not do them the honour to require a recantation of their opinion, but an acknowledgment of their preſumption.

His majeſty doth very wiſely (not ſhewing much care or regard to it) yet really to ſuppreſs their licentious courſe of talking and writing. My old lord Burghley was wont to ſay, that the Frenchman when he hath talked, he hath done; but the Engliſhman when he hath talked, he begins. It evaporateth malice and diſcontent in the one, and kindleth it in the other. And therefore upon ſome fit occaſion I wiſh a more publick example. The king's ſtate, if I ſhould now die and were opened, would be found at my heart, as queen Mary ſaid of Calais; we find additionals ſtill, but the conſumption goeth on. I pray God give his majeſty reſolution, paſſing by at once all impediments and leſs reſpects, to do that which may help it, before it be irremediable. God ever preſerve and proſper your lordſhip.

Your Lordſhip's moſt obliged friend and faithful ſervant,

23 July 1620. Fr. Verulam, *Canc.*

I have ſtaid the thouſand pounds ſet upon Engleſield for his majeſty, and given order for levying it.

CCXXXIV. To the Marquis of Buckingham.

My very good Lord,

ONE gave me a very good precept for the ſtone; that I ſhould think of it moſt when I feel it leaſt. This I apply to the king's buſineſs, which ſurely I revolve moſt when I am leaſt in action; whereof at my attendance I will give his majeſty ſuch account as can proceed from my poor and mean abilities, which as his majeſty out of grace may think to be more than they are, ſo I out of deſire may think ſometime they can effect more than they can. But ſtill it muſt be remembered, that the ſtringing of the harp, nor the tuning of it, will not ſerve, except it be well played on from time to time.

If his majeſty's buſineſs or commandments require it, I will attend him at Windſor, though I would be glad to be ſpared, becauſe quick airs at this time of the year do affect me. At London, and ſo at Theobalds and Hampton-Court, I will not fail, God willing, to wait upon his majeſty. Mean while I am exceeding glad to hear his majeſty hath been luſty and well this progreſs. Thus, much deſiring to ſee your lordſhip, *cujus amor tantum mihi creſcit in horas* (as the poet ſaith) I ever remain

Your Lordſhip's moſt obliged friend and faithful ſervant,

Gorhambury, this 30th of Aug. 1620.

FR. VERULAM, *Canc.*

CCXXXV. To the Marquis of BUCKINGHAM.

My very good Lord,

I Write now only a letter of thanks to his majeſty, for that I hear, in my abſence he was pleaſed to expreſs towards me (though unworthy) a great deal of grace and good opinion before his lords; which is much to my comfort, whereunto I muſt ever impute your lordſhip as acceſſary. I have alſo written to him what ſignification I received from ſecretary Naunton of his majeſty's will and pleaſure, leſt in ſo great a buſineſs there ſhould be any miſtaking.

The pain of my foot is gone, but the weakneſs doth a little remain, ſo as I hope within a day or two to have full uſe of it. I ever remain

Your Lordſhip's moſt obliged friend and faithful ſervant,

2 Octob. 1620.

FR. VERULAM, *Canc.*

CCXXXVI. To the KING.

It may pleaſe your Majeſty,

I Thought myſelf an unfortunate man that I could not attend you at Theobalds. But I hear that your Majeſty hath done, as God Almighty uſeth to do, which is to turn evil into good, in that your Majeſty hath been pleaſed upon that occaſion to expreſs before your lords your gracious opinion and favour towards me, which I moſt humbly thank your Majeſty for, and will aſpire to deſerve.

Secretary Naunton this day brought me your pleaſure in certain notes: that I ſhould adviſe with the two chief juſtices (old parliament men) and Sir Edward Coke (who is alſo their ſenior in that ſchool) and Sir Randall Crewe the laſt ſpeaker, and ſuch other judges as we ſhould think fit, touching that which mought in true policy, without packing or degenerate arts, prepare to a parliament, in caſe your majeſty ſhould reſolve of one to be held; and withal he ſignified to me ſome particular points, which your Majeſty very wiſely had deduced.

All your Majeſty's buſineſs is *ſuper cor meum*, for I lay it to heart, but this is a buſineſs *ſecundum cor meum*; and yet, as I will do your Majeſty all poſſible good ſervices in it, ſo I am far from ſeeking to impropriate to myſelf the thanks, but ſhall become *omnibus omnia* (as St. Paul ſaith) to attain your Majeſty's ends.

As ſoon as I have occaſion, I will write to your Majeſty touching the ſame, and will have ſpecial care to communicate with my lords, in ſome principal points, though all things are not at firſt fit for the whole table. I ever reſt

Your Majeſty's moſt bounden and moſt devoted ſervant,

2 October 1620.

FR. VERULAM, *Canc.*

Your Majeſty needeth not to doubt but that I ſhall carry the buſineſs with that ſecrecy which appertaineth.

CCXXXVII. To the Marquis of Buckingham.

My very good Lord,

YESTERDAY I called unto us the two chief juſtices, and ſerjeant Crewe, about the parliament buſineſs. To call more judges, I thought not good. It would be little to aſſiſtance, much to ſecrecy. The diſtribution of the buſineſs we made was into four parts.

I. The peruſing of the former grievance, and of things of like nature which have come ſince.

II. The conſideration of a proclamation, with the clauſes thereof, eſpecially touching elections; which clauſes nevertheleſs, we are of opinion, ſhould be rather monitory than excluſive.

III. The incluſive: that is to ſay, what perſons were fit to be of the houſe, tending to make a ſufficient and well-compoſed houſe of the ableſt men of the kingdom, fit to be adviſed with *circa ardua regni*, as the ſtyle of the writs goeth, according to the pure and true inſtitution of a parliament; and of the means to place ſuch perſons without novelty or much obſervation. For this purpoſe we made ſome liſts of names of the prime counſellors, and principal ſtateſmen or courtiers; of the graveſt or wiſeſt lawyers; of the moſt reſpected and beſt-temper'd knights and gentlemen of the county. And here *obiter* we did not forget to conſider who were the *bouteſeus* of the laſt ſeſſion, how many of them are dead, how many reduced, and how many remain, and what were fit to be done concerning them.

IV. The having ready of ſome commonwealth bills, that may add reſpect and acknowledgment of the king's care; not wooing bills to make the king and his graces cheap; but good matter to ſet them on work, that an empty ſtomach do not feed upon humour.

Of theſe four points, that which concerneth perſons is not ſo fit to be communicated with the council-table, but to be kept within fewer hands. The other three may, when they are ripe.

Mean while I thought good to give his majeſty an account what is done, and in doing, humbly craving his direction if any thing be to be alter'd or added; though it may be ourſelves ſhall have ſecond thoughts, this being but the reſult of our firſt meeting.

The ſtate of his majeſty's treaſure ſtill maketh me ſad, and I am ſorry I was not at Theobalds to report it, or that it was not done by my fellows: it is moſt neceſſary we do it faithfully and freely: for to flatter in this, were to betray his majeſty with a kiſs. I humbly pray his majeſty to think of my former counſel; and this I will promiſe, that whomſoever his majeſty ſhall make treaſurer, if his majeſty ſhall direct him to have relation to my advice, I will continue the ſame care and advice I do now, and much more chearfully when I ſhall perceive that my propoſitions ſhall not be *literae ſcriptae in glacie.*

Mean while, to keep the commiſſion in doing of ſomewhat worth the doing, it may pleaſe his majeſty to take knowledge, that upon our report we had agreed to make remonſtrance to him, that we thought Ireland might (if his majeſty leave it to our care) be brought by divers good expedients to bear their own charge; and therefore his majeſty may be pleas'd by his commandment to ſet us in hand with it out of hand. God ever proſper you.

Your Lordſhip's moſt obliged friend and faithful ſervant,

October 7. 1620. Fr. Verulam, *Canc.*

CCXXXVIII. To the Lord Chancellor.

My Lord,

I Have acquainted his majeſty with your letter, and labour in his ſervice, for which he commandeth me to give you thanks, and to let your lordſhip know, that he liketh exceeding well your method held by the judges, which could not

be amended, and concurreth with you in your opinions. First, touching the proclamation, that it ſhould be monitory and perſuaſive, rather than compulſive: and, ſecondly, that the point concerning the perſons, who ſhould be admitted, and who avoided, is fit to be kept from the knowledge of the council-table, and to be carried with all ſecrecy.

For the buſineſs of Ireland, his majeſty had heard of it before, and gave commandment to the maſter of the wards, that it ſhould be haſtened and ſet in hand with all ſpeed, which his majeſty doubteth not but is done by this time. Touching your advice for a treaſurer, his majeſty is very mindful of it, and will let you know as much at his return, when he will ſpeak further with your lordſhip of it. And ſo I reſt

Yours, etc.

Royſton, 9 Oct. 1620. G. BUCKINGHAM.

CCXXXIX. This letter was written with the KING's own hand, to my lord Chancellor VERULAM, upon his lordſhip's ſending to his Majeſty his *Novum Organum.*

My Lord,

I Have received your letter and your book, than the which you could not have ſent a more acceptable preſent unto me. How thankful I am for it, cannot better be expreſſed by me, than by a firm reſolution I have taken; firſt, to read it through with care and attention, though I ſhould ſteal ſome hours from my ſleep: having otherwiſe, as little ſpare time to read it, as you had to write it. And then, to uſe the liberty of a true friend, in not ſparing to aſk you the queſtion in any point whereof I ſhall ſtand in doubt: *nam ejus eſt explicare, cujus eſt condere:* as, on the other part, I will willingly give a due commendation to ſuch places, as, in my opinion, ſhall deſerve it. In the mean time I can with comfort aſſure you, that you could not have made choice of a ſubject more befitting your place, and your univerſal and methodical knowledge; and in the general, I have already obſerved, that you jump with me, in keeping the mid-way between the two extremes; as alſo in ſome particulars I have found that you agree fully with my opinion. And ſo praying God to give your work as good ſucceſs as your heart can wiſh, and your labours deſerve, I bid you heartily farewel.

Octob. 16. 1620. *JAMES* R.

CCXL. To the Marquis of BUCKINGHAM.

My very good Lord,

I Send his majeſty a form of a proclamation for the parliament, which I thought fit to offer firſt to his majeſty's peruſal, before I acquainted the council.

For that part which concerneth the foreign buſineſs, his majeſty will graciouſly conſider, how eaſy it is for me to miſtake, or not to attain; which his majeſty in his wiſdom will pardon, correct, and direct.

For that part touching the elections, I have communicated it with my collegues, Sir Edward Coke, the two chief juſtices, and ſerjeant Crew, who approve it well; and we are all of opinion, that it is not good to have it more peremptory, more particular, nor more ſharp.

We are thinking of ſome commonwealth laws, amongſt which I would have one ſpecial for the maintenance of the navy, as well to give occaſion to publiſh (to his majeſty's honour) what hath been already done; as, to ſpeak plainly, to do your lordſhip honour in the ſecond place; and beſides, it is agreeable to the times. God ever proſper you.

Your Lordſhip's moſt obliged friend and faithful ſervant,

October 18. 1620. FR. VERULAM, *Canc.*

CCXLI. Draught of a proclamation for a parliament, referred to in the preceding letter.

AS in our princely judgment we hold nothing more worthy of a chriſtian monarch, than the conſervation of peace at home and abroad; whereby effuſion of chriſtian blood, and other calamities of war are avoided, trade is kept open, laws and juſtice retain their due vigour and play, arts and ſciences flouriſh, ſubjects are leſs burthened with taxes and tallages, and infinite other benefits redound to the ſtate of a common-weal: ſo in our own practice we ſuppoſe there hath been ſeldom any king, that hath given more expreſs teſtimonies and real pledges of his deſire to have peace conſerved, than we have done in the whole courſe of our regiment.

For neither have we, for that which concerns ourſelves, been ready to apprehend or embrace any occaſions or opportunities of making war upon our neighbours; neither have we omitted, for that which may concern the ſtates abroad, any good office or royal endeavour for the quenching of the ſparks of troubles and diſcords in foreign parts. Wherein, as we have been always ready and willing, ſo we wiſh that we had been always as happy and prevailing in our advices and counſels that tended to that end.

And yet do we not forget, that God hath put into our hands a ſceptre over populous and warlike nations, which might have moved us to ſecond the affection and diſpoſition of our people, and to have wrought upon it for our own ambition, if we had been ſo minded. But it hath ſufficed unto us to ſeek a true and not ſwelling greatneſs, in the plantations and improvements of ſuch parts of our dominions, as have, in former times, been more deſolate or uncivil, and in the maintaining of all our loving ſubjects in general in tranquillity and ſecurity, and the other conditions of good government, and happy times. But amongſt other demonſtrations of our conſtant purpoſe, and provident care to maintain peace, there was never ſuch a trial, nor ſo apparent to the world (as in a theatre) as our perſiſting in the ſame reſolution, ſince the time that our dear ſon-in-law was elected and accepted king of Bohemia; by how much the motives tending to ſhake and aſſail our ſaid reſolution were the more forcible. For neither did the glory of having our deareſt daughter and ſon-in-law to wear a crown; nor the extreme alacrity of our people devoted to that cauſe; nor the repreſentations, which might be ſet before us of dangers (if we ſhould ſuffer a party in Chriſtendom, held commonly adverſe and ill affected to our ſtate and government, to gather farther reputation and ſtrength) tranſport us to enter into an auxiliary war, in proſecution of that quarrel: but contrariwiſe, finding the juſtice of the cauſe not ſo clear, as that we could be preſently therein ſatisfied; and weighing with ourſelves likewiſe, that if the kingdom of Bohemia had continued in the houſe of Auſtria, yet nevertheleſs the balance of Chriſtendom had ſtood in no other ſort than it had done for many years before, without increaſe of party; and chiefly fearing that the wars in thoſe parts of Germany, which have been hitherto the bulwark of Chriſtendom againſt the approaches of the Turk, might by the inteſtine diſſenſions allure and let in the common enemy; we did abſtain to declare or engage ourſelves in that war, and were contented only to give permiſſion to the ambaſſador of our ſon-in-law, to draw ſome voluntary helps of men and money from our ſubjects, being a matter that violated no treaty, and could not be denied in caſe of ſo near a conjunction.

But while we contained ourſelves in this moderation, we find the event of war hath much altered the caſe, by the late invaſion of the Palatinate, whereby (howſoever under the pretence of a diverſion) we find our ſon in fact expulſed in part, and in danger to be totally diſpoſſeſſed of his ancient inheritance and patrimony, ſo long continued in that noble line; whereof we cannot but highly reſent, if it ſhould be alienated and raviſhed from him in our times, and to the prejudice of our grand-children and line-royal. Neither can we think it

ſafe

ſafe for us in reaſon of ſtate, that the county Palatine, carrying with itſelf an electorate, and having been ſo long in the hands of princes of our religion, and no way depending upon the houſe of Auſtria, ſhould now become at the diſpoſing of that houſe; being a matter, that indeed might alter the balance of Chriſtendom importantly, to the weakening of our eſtate, and the eſtate of our beſt friends and confederates.

Wherefore, finding a concurrence of reaſons and reſpects of religion, nature, honour, and eſtate; all of them inducing us in no wiſe to indure ſo great an alteration; we are reſolved to imploy the uttermoſt of our forces and means, to recover and reſettle the ſaid Palatinate to our ſon and our deſcendants, purpoſing nevertheleſs, according to our former inclination ſo well grounded, not altogether to intermit (if the occaſions give us leave) the treaties of peace and accord, which we have already begun, and whereof the coming on of the winter, and the counterpoiſe of the actions of war, hitherto may give us as yet ſome appearance of hope. I pray God this hold.

But foraſmuch as it were great improvidence to depend upon the ſucceſs of ſuch treaties, and therefore good policy requires that we ſhould be prepared for a war, which we intend for the recovery and aſſuring of the ſaid Palatinate, with the dependences (a deſign of no ſmall charge and difficulty, the ſtrength and conjunctures of the adverſe party conſidered) we have thought good to take into our princely and ſerious conſideration (and that with ſpeed) all things that may have relation to ſuch a deſignment; amongſt which we hold nothing more neceſſary, than to confer and adviſe with the common council of our kingdom, upon this ſo important a ſubject.

For although the making of war or peace be a ſecret of empire, and a thing properly belonging to our high prerogative royal, and imperial power; yet nevertheleſs, in cauſes of that nature, which we ſhall think fit not to reſerve, but to communicate, we ſhall ever think ourſelves much aſſiſted and ſtrengthened by the faithful advice, and general aſſent of our loving ſubjects.

Moreover, no man is ſo ignorant, as to expect that we ſhould be any ways able (moneys being the ſinews of war) to enter into the liſt againſt ſo great potentates, without ſome large and bountiful help of treaſure from our people; as well towards the maintenance of the war, as towards the relief of our crown and eſtate. And this the rather, for that we have now, by the ſpace of full ten years (a thing unheard of in late times) ſubſiſted by our own means, without being chargeable to our people, otherwiſe than by ſome voluntary gifts of ſome particulars, which though in total amounted to no great matter, we thankfully acknowledge at their hands: but as, while the affairs abroad were in greater calm, we did content ourſelves to recover our wants by provident retrenchment of charge, and honourable improvement of our own, thinking to wear them out without troubling our people; ſo in ſuch a ſtate of Chriſtendom, as ſeemeth now to hang over our heads, we durſt no longer rely upon thoſe ſlow remedies, but thought neceſſary (according to the ancient courſe of our progenitors) to reſort to the good affections and aids of our loving ſubjects.

Upon theſe conſiderations, and for that alſo, in reſpect of ſo long intermiſſion of a parliament, the times may have introduced ſome things fit to be reformed, either by new laws, or by the moderate deſires of our loving ſubjects, dutifully intimated unto us (wherein we ſhall ever be no leſs ready to give them all gracious ſatisfaction, than their own hearts can deſire) we have reſolved, by the advice of our privy council, to hold a parliament at our city of Weſtminſter.

And becauſe as well this great cauſe (there to be handled amongſt the reſt, and to be weighed by the beam of the kingdom) as alſo the true and ancient inſtitution of parliament, do require the lower-houſe (at this time, if ever) to be compounded of the graveſt, ableſt, and worthieſt members that may be found: we do hereby, out of the care of the common good, wherein themſelves are participant (without all prejudice to the freedom of elections) admoniſh

moniſh all our loving ſubjects (that have votes in the elections of knights and burgeſſes) of theſe few points following.

Firſt, That they caſt their eyes upon the worthieſt men of all ſorts, knights and gentlemen, that are lights and guides in their countries, experienced parliament-men, wiſe and diſcreet ſtateſmen, that have been practiſed in publick affairs, whether at home or abroad; grave and eminent lawyers, ſubſtantial citizens and burgeſſes, and generally ſuch as are intereſſed and have portion in the eſtate.

Secondly, That they make choice of ſuch as are well affected in religion, without declining either on the one hand to blindneſs and ſuperſtition, or on the other hand to ſchiſm or turbulent diſpoſition.

Thirdly, and laſtly, That they be truly ſenſible, not to diſvalue or diſparage the houſe with bankrupts and neceſſitous perſons, that may deſire long parliaments only for protection; lawyers of mean account and eſtimation; young men that are not ripe for grave conſultations; mean dependents upon great perſons, that may be thought to have their voices under command, and ſuch like obſcure and inferior perſons: ſo that, to conclude, we may have the comfort to ſee before us the very face of a ſufficient and well compoſed houſe, ſuch as may be worthy to be a repreſentative of the third eſtate of our kingdom, fit to nouriſh a loving and comfortable meeting between us and our people, and fit to be a noble inſtrument, under the bleſſing of Almighty God, and our princely care and power, and with the loving conjunction of our prelates and peers, for the ſettling of ſo great affairs as are before expreſſed.

CCXLII. To the Lord Chancellor.

My honourable Lord,

I Have ſhewed your letter and the proclamation to his majeſty, who expecting only, according as his meaning was, directions therein for the well ordering of the elections of the burgeſſes, findeth a great deal more, containing matter of ſtate, and the reaſons of calling the parliament; whereof neither the people are capable, nor is it fit for his majeſty to open unto them, but to reſerve to the time of their aſſembling, according to the courſe of his predeceſſors, which his majeſty intendeth to follow. The declaring whereof in the proclamation would cut off the ground of his majeſty's, and your lordſhip's ſpeech, at the proper time: his majeſty hath therefore extracted ſomewhat of the latter part of the draught you have ſent, purpoſing to take a few days ſpace to ſet down himſelf what he thinketh fit, and to make it ready againſt his return hither, or to Theobalds at the furtheſt, and then to communicate it to your lordſhip, and the reſt of the lords. And ſo I reſt

Yours, etc.

Royſton, 19 Oct. 1620. G. BUCKINGHAM.

CCXLIII. To * Sir HENRY WOTTON.

My very good couſin,

THE letter which I received from your lordſhip, upon your going to ſea, was more than a compenſation for any former omiſſion; and I ſhall be very glad to entertain a correſpondence with you in both kinds which you write of: for the latter, I am now ready for you, having ſent you ſome ore of that

* Mr. Stephens obſerves, when this letter was written, upon the occaſion of my lord chancellor's publiſhing his *Novum Organum*, Sir Henry Wotton, ſo eminent for his many embaſſies, great learning, candor, and other accompliſhments, was reſident at Vienna, endeavouring to quench that fire which began to blaze in Germany, upon the proclaiming the elector Palatine king of Bohemia. How grateful a preſent this book was to Sir Henry, cannot better be expreſſed than by his anſwer to this letter; which, though it may be found in his *Remains*, the reader will not be diſpleaſed to ſee part of it tranſcribed in this place.

that mine. I thank you for your favours to Mr. Meautys, and I pray continue the ſame. So wiſhing you out of your honourable exile, and placed in a better orb, I reſt

Your Lordſhip's affectionate kinſman and aſſured friend,

York-houſe, Oct. 20. 1620. FR. VERULAM, *Canc.*

Right honourable and my very good Lord,

I Have your lordſhip's letters dated Octob. 20, and I have withal, by the care of my couſin Meautys, and by your own ſpecial favour, three copies of that work, wherewith your lordſhip hath done a great and ever-living benefit to all the children of nature, and to nature herſelf, in her uttermoſt extent and latitude; who never before had ſo noble nor ſo true an interpreter, or (as I am ready to ſtyle your lordſhip) never ſo inward a ſecretary of her cabinet. But of your ſaid work (which came but this week to my hands) I ſhall find occaſion to ſpeak more hereafter; having yet read only the firſt book thereof, and a few aphoriſms of the ſecond. For it is not a banquet that men may ſuperficially taſte, and put up the reſt in their pockets; but in truth a ſolid feaſt, which requireth due maſtication——*and ſo on.*

But I am gone farther than I meant in ſpeaking of this excellent labour, while the delight yet I feel, and even the pride that I take in a certain congeniality (as I may term it) with your lordſhip's ſtudies, will ſcant let me ceaſe. And indeed I owe your lordſhip, even by promiſe (which you are pleas'd to remember, and thereby doubly binding me) ſome trouble this way; I mean by the commerce of philoſophical experiments, which ſurely, of all other, is the moſt ingenious traffick.

CCXLIV. Lord of St. ALBANS to Mr. MATTHEWS.

SIR,

THE report of this act, which I hope will prove the laſt of this buſineſs, will probably, by the weight it carries, fall and ſeize on me. And therefore, not now at will, but upon neceſſity it will become me to call to mind what paſſed; and (my head being then wholly employed about invention) I may the worſe put things, upon the account of mine own memory. I ſhall take phyſick to-day, upon this change of weather, and vantage of leiſure; and I pray you not to allow yourſelf ſo much buſineſs, but that you may have time to bring me your friendly aid before night, *etc.*

CCXLV. To Mr. MATTHEWS, believing his danger leſs than he found it.

SIR,

I Say to you, upon the occaſion which you give me in your laſt, *Modicae fidei, quare dubitaſti?* I would not have my friends (though I know it be out of love) too apprehenſive either of me, or for me; for, I thank God, my ways are ſound and good, and I hope God will bleſs me in them. When once my maſter, and afterwards myſelf, were both of us in extremity of ſickneſs (which was no time to diſſemble) I never had ſo great pledges and certainties of his love and favour: and that which I knew then, ſuch as took a little poor advantage of theſe later times, know ſince. As for the nobleman who paſſed that way by you, I think he is faln out with me for his pleaſure, or elſe, perhaps, to make good ſome of his own miſtakings. For he cannot in his heart but think worthily of my affection and well-deſerving towards him; and as for me, I am very ſure that I love his nature and parts.

CCXLVI. To Mr. MATTHEWS, expreſſing great acknowledgment and kindneſs.

SIR,

I Have been too long a debtor to you for a letter, and eſpecially for ſuch a letter, the words whereof were delivered by your hand, as if it had been in old gold: for it was not poſſible for entire affection to be more generouſly and effectually expreſſed. I can but return thanks to you; or rather indeed ſuch an anſwer, as may better be of thoughts than words. As for that which may concern myſelf, I hope God hath ordained me ſome ſmall time, whereby

I may redeem the loſs of much. Your company was ever of contentment to me, and your abſence of grief; but now it is of grief upon grief. I beſeech you therefore make haſte hither, where you ſhall meet with as good a welcome as your own heart can wiſh.

CCXLVII. To Mr. MATTHEWS, owning his impatient attention to do him ſervice.

SIR,

IT is not for nothing that I have deferred my eſſay *De amicitia*, whereby it hath expected the proof of your great friendſhip towards me: whatſoever the event be (wherein I depend upon God, who ordains the effects, the inſtrument, all) yet your inceſſant thinking of me, without loſs of a moment of time, or a hint of occaſion, or a circumſtance of endeavour, or the ſtroke of a pulſe, in demonſtration of your affection to me, doth infinitely tye me to you. Commend my ſervice to my friend. The reſt to-morrow, for I hope to lodge at London this night, etc.

Secrecy I need not recommend, otherwiſe than that you may recommend it over to our friend; both becauſe it prevents oppoſition, and becauſe it is both the king's and my lord marquis's nature, to love to do things unexpected.

CCXLVIII. To the Marquis of BUCKINGHAM.

Our very good Lord,

WE thought it our duty to impart to his majeſty, by your lordſhip, one particular of parliament buſineſs, which we hold it our part to relate, though it be too high for us to give our opinion of it.

The officers that make out the writs of parliament addreſſed themſelves to me the chancellor to know, whether they ſhould make ſuch a writ of ſummons to the prince, giving me to underſtand, that there were ſome precedents of it; which I the chancellor communicated with the reſt of the committees for parliament buſineſs; in whoſe aſſiſtance I find ſo much ſtrength that I am not willing to do any thing without them: Whereupon we (according to his majeſty's prudent and conſtant rule, for obſerving in what reigns the precedents were) upon diligent ſearch have found as followeth.

That king Edward I. called his eldeſt ſon prince Edward to his parliament in the thirtieth year of his reign, the prince then being about the age of eighteen years; and to another parliament in the four and thirtieth year of his reign.

Edward III. called the Black Prince his eldeſt ſon to his parliament in the five and twentieth, eight and twentieth, and two and fortieth years of his reign.

Henry IV. called prince Henry to his parliaments in the firſt, third, eighth and eleventh years of his reign, the prince being under age in the three firſt parliaments; and we find in particular, that the eighth year, the prince ſat in the upper houſe in days of buſineſs, and recommended a bill to the lords.

King Edward IV. called prince Edward his ſon to his parliament, in *anno* 22 of his reign, being within age.

King Henry VII. called prince Arthur to his parliament in the ſeventh year of his reign, being within age.

Of king Edward VI. we find nothing, his years were tender, and he was not created prince of Wales.

And for prince Henry, he was created prince of Wales, during the laſt parliament at which he lived.

We have thought it our duty to relate to his majeſty what we have found, and withal that the writs of ſummons to the prince are not much differing from the writs to the peers; for they run *in fide et ligeancia*, and ſometime *in fide et homagio in quibus nobis tenemini*, and after, *conſilium nobis impenſuri*

circa

circa ardua regni. Whereby it ſhould ſeem that princes came to parliament not only the days of ſolemnity, when they came without writ, but alſo on the days of ſitting. And if it ſhould be ſo, then the prince may vote, and likewiſe may be of a committee of the upper houſe, and conſequently may be of a conference with the lower houſe, and the like.

This might have been made more manifeſt as to the preſence, and acts of the prince in days of ſitting, if, through the negligence of officers, the journal-books of the upper houſe before the reign of king Henry VIII. were not all miſſing.

All which we thought it appertained to our care to look through, and faithfully to repreſent to his majeſty: and having agreed ſecrecy amongſt ourſelves, and enjoined it to the inferior officers, we humbly deſire to know his majeſty's pleaſure, whether he will ſilence the queſtion altogether, or make uſe of it for his ſervice, or refer it to his council, or what other courſe he will be pleaſed to take according to his great wiſdom and good pleaſure.

This we have diſpatched the ſooner, becauſe the writs of ſummons muſt have forty days diſtance from the firſt days of the parliament. And for the other parts of our accounts, his majeſty ſhall hear from us, by the grace of God, within few days; evermore praying for his majeſty's proſperity, and wiſhing your lordſhip much happineſs.

Your Lordſhip's to be commanded,

York-houſe, 21 Nov. 1620. FR. VERULAM, *Canc.* EDW. COKE, H. MONTAGU, HENRY HOBARTE, RAN. CREW.

CCXLIX. To the Marquis of BUCKINGHAM.

My very good Lord,

WE have theſe two days paſt, made report to the board of our parliament committee, upon relation whereof, for ſome things we provide, for ſome things we arm.

The king, by my lord treaſurer's ſignification, did wiſely put it upon a conſult, whether the patents, which we mentioned in our joint letters, were at this time to be removed by act of council, before parliament. I opined (but yet ſomewhat like Ovid's miſtreſs, that ſtrove, but yet as one that would be overcome) that yes. My reaſons:

That men would go better and faſter to the main errand.

That theſe things ſhould not be ſtaged, nor talked of, and ſo the leſs fuel to the fire.

That in things of this nature, wherein the council had done the like in former particulars (which I enumerated) before parliament, near parliament, during parliament, the council were to keep their wonted centinel, as if they thought not of a parliament, to deſtroy in other patents, as concealments.

The reaſons on the other ſide were:

That it would be thought but an humouring of the parliament (being now in the calends of a parliament) and that after parliament they would come up again.

That offered graces, by reaſon and experience, loſe their thanks.

That they are to be ſuffered to play upon ſomething, ſince they can do nothing of themſelves.

That the chuſing out of ſome things, when perhaps their minds might be more upon other things, would do no great effect.

That former patents taken away by act of council, were upon the complaints of particular perſons; whereas now it ſhould ſeem to be done *tanquam ex officio.*

To this I yielded, though, I confeſs, I am yet a little doubtful to the point of *ſuavibus modis.* But it is true that the ſpeech of theſe, though in the lower houſe, may be contemned; and if way be given to them (as I writ to your lordſhip of ſome of them in my laſt) it will ſort to your honour. For other things, the lords have put them in a very good way, of which I will give ex-

preſs account when I ſee his majeſty, as alſo of other obſervations concerning parliament. For if his majeſty ſaid well, that when he knew the men and the elections, he would gueſs at the ſucceſs; the prognoſticks are not ſo good as I expected, occaſioned by the late occurrents abroad, and the general licentious ſpeaking of ſtate matters, of which I wrote in my laſt. God ever keep you.

Your Lordſhip's moſt obliged friend and faithful ſervant,

16 Dec. 1620. FR. VERULAM, *Canc.*

CCL. To the Lord Chancellor.

My honourable Lord,

AS ſoon as his majeſty's convenience would permit, I have acquainted him with the draught of the proclamation your lordſhip ſent me by his majeſty's direction: his majeſty liketh it in every point ſo well, both in matter and form, that he findeth no cauſe to alter a word in it, and would have your lordſhip acquaint the lords of the council with it (though he aſſureth himſelf, no man can find any thing in it to be changed) and to take order for the ſpeedy ſetting it forth. And ſo I reſt

Yours, etc.

Theobalds, 21 Dec. 1620. G. BUCKINGHAM.

CCLI. To the Lord Chancellor.

I Have acquainted his majeſty with your letter and the incloſed: the matter which his majeſty hath been thinking upon for his ſpeech concerneth both the points of the inſtitution of a parliament, and of the end for which this is called; yet his majeſty thinketh it fit that ſome extract be made out of it which needeth to be but very ſhort, as he will ſhew you at his return.

Yours, etc.

Theobalds, 19 Jan. 1620. G. BUCKINGHAM.

CCLII. To the Marquis of BUCKINGHAM.

My very good Lord,

YESTERDAY I know was no day; now I hope I ſhall hear from your lordſhip, who are my anchor in theſe floods. Mean while to eaſe my heart, I have written to his majeſty the incloſed; which I pray your lordſhip to read adviſedly, and to deliver it, or not to deliver it, as you think good. God ever proſper your lordſhip.

Yours ever, etc.

March 25. 1621. FR. ST. ALBAN, *Canc.*

CCLIII. To the KING.

It may pleaſe your moſt excellent Majeſty,

TIME hath been when I have brought unto you *gemitum columbae* from others, now I bring it from myſelf. I fly unto your Majeſty with the wings of a dove, which once within theſe ſeven days I thought would have carried me a higher flight. When I enter into myſelf, I find not the materials of ſuch a tempeſt as is come upon me: I have been (as your Majeſty knoweth beſt) never author of any immoderate counſel, but always deſired to have things carried *ſuavibus modis*. I have been no avaricious oppreſſor of the people. I have been no haughty, or intolerable, or hateful man, in my converſation

ſation, or carriage: I have inherited no hatred from my father, but am a good patriot born. Whence ſhould this be? For theſe are the things that uſe to raiſe diſlikes abroad.

For the houſe of commons, I began my credit there, and now it muſt be the place of the ſepulture thereof; and yet this parliament, upon the meſſage touching religion, the old love revived, and they ſaid, I was the ſame man ſtill, only honeſty was turned into honour.

For the upper houſe, even within theſe days, before theſe troubles, they ſeemed as to take me into their arms, finding in me ingenuity, which they took to be the true ſtraight line of nobleneſs, without any crooks or angles.

And for the briberies and gifts, wherewith I am charged, when the books of hearts ſhall be opened, I hope I ſhall not be found to have the troubled fountain of a corrupt heart, in a depraved habit of taking rewards to pervert juſtice; howſoever I may be frail, and partake of the abuſes of the times.

And therefore I am reſolved, when I come to my anſwer, not to trick up my innocency (as I writ to the lords) by cavillations, or voidances; but to ſpeak to them the language that my heart ſpeaketh to me, in excuſing, extenuating, or ingenuouſly confeſſing; praying to God to give me the grace to ſee the bottom of my faults, and that no hardneſs of heart do ſteal upon me, under ſhew of more neatneſs of conſcience, than is cauſe. But not to trouble your Majeſty any longer, craving pardon for this long mourning letter; that which I thirſt after, *as the hart after the ſtreams* is, that I may know, by my matchleſs friend that preſenteth to you this letter, your Majeſty's heart (which is an *abyſſus* of goodneſs, as I am an *abyſſus* of miſery) towards me. I have been ever your man, and counted myſelf but an uſufructuary of my ſelf, the property being yours. And now making myſelf an oblation to do with me as may beſt conduce to the honour of your juſtice, the honour of your mercy, and the uſe of your ſervice, reſting as clay in your Majeſty's gracious hands,

FR. ST. ALBAN, *Canc.*

March 25. 1621.

CCLIV. To the KING.

It may pleaſe your moſt excellent Majeſty,

I Think myſelf infinitely bounden to your Majeſty, for vouchſafing me acceſs to your Royal Perſon, and to touch the hem of your garment. I ſee your Majeſty imitateth him that would not *break the broken reed, nor quench the ſmoking flax*; and as your Majeſty imitateth Chriſt, ſo I hope aſſuredly my lords of the upper houſe will imitate you: and unto your Majeſty's grace and mercy, and next to my lords, I recommend myſelf. It is not poſſible, nor it were not ſafe, for me to anſwer particulars till I have my charge; which when I ſhall receive, I ſhall without fig-leaves or diſguiſe excuſe what I can excuſe, extenuate what I can extenuate, and ingenuouſly confeſs what I can neither clear nor extenuate. And if there be any thing which I mought conceive to be no offence, and yet is, I deſire to be informed, that I may be twice penitent, once for my fault, and the ſecond time for my error. And ſo ſubmitting all that I am to your Majeſty's grace, I reſt,

20 April 1621.

CCLV. To the KING's moſt Excellent Majeſty.

It may pleaſe your Majeſty,

IT hath pleaſed God for theſe three days paſt to viſit me with ſuch extremity of head-ach, upon the hinder part of my head, fixed in one place, that I thought verily it had been ſome impoſthumation. And then the little phyſick that I have, told me, that either it muſt grow to a congelation, and ſo to a lethargy;

thargy; or to break, and ſo to a mortal fever and ſudden death: which apprehenſion (and chiefly the anguiſh of the pain) made me unable to think of any buſineſs. But now that the pain itſelf is aſſuaged to be tolerable, I reſume the care of my buſineſs, and therein proſtrate myſelf again, by my letter, at your Majeſty's feet.

Your Majeſty can bear me witneſs, that, at my laſt ſo comfortable acceſs, I did not ſo much as move your Majeſty (by your abſolute power of pardon, or otherwiſe) to take my cauſe into your hands, and to interpoſe between the ſentence of the houſe; and, according to my own deſire, your Majeſty left it to the ſentence of the houſe, and it was reported by my lord treaſurer.

But now, if, not *per omnipotentiam* (as the divines ſpeak) but *per poteſtatem ſuaviter diſponentem*, your Majeſty will graciouſly ſave me from a ſentence, with the good liking of the houſe, and that cup may paſs from me, it is the utmoſt of my deſires.

This I move with the more belief, becauſe I aſſure myſelf that if it be reformation that is ſought, the very taking away the ſeal, upon my general ſubmiſſion, will be as much in example, for this four hundred years, as any farther ſeverities.

The means of this I moſt humbly leave unto your Majeſty. But ſurely I conceive, that your Majeſty opening yourſelf in this kind to the lords counſellors, and a motion from the prince, after my ſubmiſſion, and my lord marquis uſing his intereſt with his friends in the houſe, may affect the ſparing of a ſentence, I making my humble ſuit to the houſe for that purpoſe, joined with the delivery of the ſeal into your Majeſty's hands.

This is the laſt ſuit I ſhall make to your Majeſty in this buſineſs, proſtrating myſelf at your mercy-ſeat, after fifteen years ſervice, wherein I have ſerved your Majeſty in my poor endeavours with an entire heart, and, as I preſumed to ſay unto your Majeſty, am ſtill a virgin for matters which concern your perſon or crown; and now only craving, that after eight ſteps of honour I be not precipitated altogether.

But becauſe he that hath taken bribes is apt to give bribes, I will go farther, and preſent your Majeſty with a bribe. For if your Majeſty give me peace and leiſure, and God give me life, I will preſent your Majeſty with a good hiſtory of England, and a better digeſt of your laws. And ſo concluding with my prayers, I reſt

Your Majeſty's afflicted, but ever devoted ſervant,

21 Apr. 1621. FR. ST. ALBAN, *Canc.*

CCLVI. To the Prince of WALES.

It may pleaſe your Highneſs,

WHEN I call to mind, how infinitely I am bound to your highneſs, that ſtretched forth your arm to ſave me from a ſentence; that took hold of me to keep me from being plunged deep in a ſentence; that hath kept me alive in your gracious memory and mention ſince the ſentence; pitying me as (I hope) I deſerve, and valuing me far above that I can deſerve: I find my words almoſt as barren as my fortunes, to expreſs unto your highneſs the thankfulneſs I owe. Therefore I can but reſort to prayers to Almighty God to clothe you with his moſt rich and precious bleſſings, and likewiſe joyfully to meditate upon thoſe he hath conferred upon you already; in that he hath made you to the king your father, a principal part of his ſafety, contentment and continuance: in yourſelf ſo judicious, accompliſhed, and graceful in all your doings, with more virtues in the buds (which are the ſweeteſt) than have been known in a young prince, of long time; with the realm ſo well beloved, ſo much honoured, as it is mens daily obſervation how nearly you approach to his majeſty's perfections; how every day you exceed yourſelf; how, compared with other princes, which God hath ordained

dained to be young at this time, you ſhine amongſt them; they rather ſetting off your religious, moral, and natural excellencies, than matching them, though you be but a ſecond perſon. Theſe and ſuch like meditations I feed upon, ſince I can yield your highneſs no other retribution. And for myſelf, I hope by the aſſiſtance of God above (of whoſe grace and favour I have had extraordinary ſigns and effects during my afflictions) to lead ſuch a life in the laſt acts thereof, as whether his majeſty employ me, or whether I live to my ſelf, I ſhall make the world ſay that I was not unworthy ſuch a patron.

I am much beholden to your highneſs's worthy ſervant Sir John Vaughan; the ſweet air, and loving uſage of whoſe houſe hath already much revived my languiſhing ſpirits; I beſeech your highneſs, thank him for me. God ever preſerve and proſper your highneſs.

Your Highneſs's moſt humble and moſt bounden ſervant,

1 June 1621. FR. ST. ALBAN.

CCLVII. To the KING.

It may pleaſe your moſt excellent Majeſty,

I Humbly thank your Majeſty for my liberty, without which timely grant any farther grace would have come too late. But your Majeſty that did ſhed tears in the beginning of my trouble, will, I hope, ſhed the dew of your grace and goodneſs upon me in the end. Let me live to ſerve you, elſe life is but the ſhadow of death to

Your Majeſty's moſt devoted ſervant,

4 June, 1621. FR. ST. ALBAN.

CCLVIII. To the Marquis of BUCKINGHAM.

My very good Lord,

I Heartily thank your lordſhip for getting me out of priſon: and now my body is out, my mind nevertheleſs will be ſtill in priſon, till I may be on my feet to do his majeſty and your lordſhip faithful ſervice. Wherein your lordſhip, by the grace of God, ſhall find that my adverſity hath neither ſpent, nor pent my ſpirits. God proſper you.

Your Lordſhip's moſt obliged friend and faithful ſervant,

4 June, 1621. FR. ST. ALBAN.

CCLIX. A Memorial for his MAJESTY'S ſervice.

FOR that your Majeſty is pleaſed to call for my opinion, concerning the ſacred intention you have to go on with the reformation of your courts of juſtice, and relieving the grievances of your people, which the parliament hath entered into; I ſhall never be a recuſant, though I be confined, to do you ſervice.

Your Majeſty's ſtar-chamber, next your court of parliament, is your higheſt chair. You never came upon that mount, but your garments did ſhine before you went off. It is the ſupreme court of judicature ordinary, it is an open council; nothing I would think can be more ſeaſonable (if your other appointments permit it) than if your Majeſty will be pleaſed to come thither in perſon, the morrow after this term (which is the time anniverſary, before the circuits and the long vacation) and there make an open declaration:

That you purpoſe to purſue the reformation, which the parliament hath begun. That all things go well, in all affairs, when the ordinary ad extraordinary are well mingled, and tempered together. That in matters of your treaſure, you did rely upon your parliament for the extraordinary, but you were ever deſirous to do what you could, by improvements, retrenchments, and the like,

to

to ſet the ordinary in good frame and eſtabliſhment. That you are in the ſame mind in matter of reformation of juſtice, and grievance, to aſſiſt yourſelf with the advice, and authority of parliament at times; but mean while to go on with the ſame intentions, by your own regal power and care. That it doth well in church-muſick when the greateſt part of the hymn is ſung by one voice, and then the choir at all times falls in ſweetly and ſolemnly, and that the ſame harmony ſorteth well in monarchy, between the king and his parliament.

That all great reformations are beſt brought to perfection by a good correſpondence between the king and his parliament, and by well ſorting the matters and the times; for in that which the king doth in his ordinary adminiſtration, and proceedings, neither can the information be ſo univerſal, nor the complaint ſo well encouraged, nor the referenees ſo many times free from private affection, as when the king proceedeth by parliament; on the other ſide, that the parliament wanteth time to go through with many things; beſides, ſome things are of that nature, as they are better diſcerned, and reſolved by a few than by many. Again, ſome things are ſo merely regal, as it is not fit to transfer them; and many things, whereof it is fit for the king to have the principal honour and thanks.

Therefore, that according to theſe differences and diſtributions, your Majeſty meaneth to go on, where the parliament hath left, and to call for the memorials, and inchoations of thoſe things, which have paſſed in both houſes, and to have them paſs the file of your council, and ſuch other aſſiſtance as ſhall be thought fit to be called reſpectively, according to the nature of the buſineſs, and to have your learned counſel ſearch precedents what the king hath done for matter of reformation, as the parliament hath informed themſelves by precedents what the parliament hath done: and thereupon that the clock be ſet, and reſolutions taken, what is to be holpen by commiſſion, what by act of council, what by proclamation, what to be prepared for parliament, what to be left wholly for parliament.

That if your Majeſty had done this before a parliament, it mought have been thought to be done to prevent a parliament, whereas, now it is to purſue a parliament; and that by this means many grievances ſhall be anſwered by deed, and not by word; and your Majeſty's care ſhall be better than any ſtanding committee in this interim between the meetings of parliament.

For the particulars, your Majeſty in your grace and wiſdom will conſider, how unproper and how unwarranted a thing it is for me, as I now ſtand, to ſend for entries of parliament, or for ſearches for precedents, whereupon to ground an advice; and beſides what I ſhould now ſay may be thought by your Majeſty (how good an opinion ſoever you have of me) much more by others, to be buſy or officious, or relating to my preſent fortunes.

CCLX. To the Marquis of BUCKINGHAM.

My very good Lord,

YOUR lordſhip, I know, and the king both, mought think me very unworthy of that I have been, or that I am, if I ſhould not by all means deſire to be freed from the reſtraint which debarreth me from approach to his majeſty's perſon, which I ever ſo much loved, and admired; and ſevereth me likewiſe from all conference with your lordſhip, which is my ſecond comfort. Nevertheleſs, if it be conceived that it may be matter of inconvenience, or envy, my particular reſpects muſt give place: only in regard of my preſent urgent occaſions, to take ſome preſent order for the debts that preſs me moſt, I have petitioned his majeſty to give me leave to ſtay at London till the laſt of July, and then I will diſpoſe of my abode according to the ſentence. I have ſent to the prince to join with you in it, for though the matter ſeem ſmall, yet it importeth me much. God proſper you.

Your Lordſhip's true ſervant,

20 June 1621. FR. ST. ALBAN.

CCLXI.

CCLXI. To the Marquis of Buckingham.

My very good Lord,

I Humbly thank your lordſhip for the grace and favour you did both to the meſſage, and meſſenger, in bringing Mr. Meautys to kiſs his majeſty's hands, and to receive his pleaſure from himſelf. My riches in my adverſity have been, that I have had a good maſter, a good friend, and a good ſervant.

I perceive by Mr Meautys his majeſty's inclination, that I ſhould go firſt to Gorhambury; and his majeſty's inclinations have ever been with me inſtead of directions. Wherefore I purpoſe, God willing, to go thither forthwith, humbly thanking his majeſty, nevertheleſs, that he meant to have put my deſire, in my petition contained, into a way, if I had inſiſted upon it; but I will accommodate my preſent occaſions as I may, and leave the times, and ſeaſons, and ways, to his majeſty's grace and choice.

Only I deſire his majeſty to bear with me if I have preſſed unſeaſonably. My letters out of the Tower were *de profundis*; and the world is a priſon, if I may not approach his majeſty, finding in my heart as I do. God preſerve and proſper his majeſty and your lordſhip.

Your Lordſhip's faithful and bounden ſervant,

22 June 1621. Fr. St. Alban.

CCLXII. To the Marquis of Buckingham.

My very good Lord,

I Thank God I am come very well to Gorhambury, whereof I thought your lordſhip would be glad to hear ſometimes; my lord, I wiſh myſelf by you in this ſtirring world, not for any love to place or buſineſs, for that is almoſt gone with me, but for my love to yourſelf, which can never ceaſe in

Your Lordſhip's moſt obliged friend and true ſervant,

Fr. St. Alban.

Being now out of uſe and out of ſight, I recommend myſelf to your lordſhip's love and favour, to maintain me in his majeſty's grace and good intention.

CCLXIII. To the King.

It may pleaſe your moſt excellent Majeſty,

I Perceive by my noble and conſtant friend the marquis, that your Majeſty hath a gracious inclination towards me, and taketh care of me, for fifteen years the ſubject of your favour, now of your compaſſion; for which I moſt humbly thank your Majeſty. This ſame *nova creatura* is the work of God's pardon and the king's; and ſince I have the inward ſeal of the one, I hope well of the other.

Utar, ſaith Seneca to his maſter, *magnis exemplis; nec meae fortunae, ſed tuae.* Demoſthenes was baniſhed for bribery of the higheſt nature, yet was recalled with honour; Marcus Livius was condemned for exactions, yet afterwards made conſul and cenſor. Seneca baniſhed for divers corruptions, yet was afterwards reſtored, and an inſtrument of that memorable *Quinquennium Neronis*. Many more. This, if it pleaſe your Majeſty, I do not ſay for appetite of employment, but for hope that if I do by myſelf as is fit, your Majeſty will never ſuffer me to die in want or diſhonour. I do now feed myſelf upon remembrance, how when your Majeſty uſed to go a progreſs, what loving and confident charges you were wont to give me touching your buſineſs. For as

Ariſtotle ſaith, young men may be happy by hope, ſo why ſhould not old men, and ſequeſtred men, by remembrance? God ever proſper and preſerve your Majeſty.

Your Majeſty's moſt bounden and devoted ſervant,

16 July 1621. FR. ST. ALBAN.

CCLXIV. To the Lord ST. ALBAN.

My honourable Lord,

I Have delivered your lordſhip's letter of thanks to his majeſty, who accepted it very graciouſly, and will be glad to ſee your book, which you promiſed to ſend very ſhortly, as ſoon as it cometh. I ſend your lordſhip his majeſty's warrant for your pardon, as you deſired it; but am ſorry, that in the current of my ſervice to your lordſhip there ſhould be the leaſt ſtop of any thing; yet having moved his majeſty, upon your ſervant's intimation, for your ſtay in London till Chriſtmas, I found his majeſty, who hath in all other occaſions, and even in that particular already, to the diſlike of many of your own friends, ſhewed with great forwardneſs his gracious favour towards you, very unwilling to grant you any longer liberty to abide there; which being but a ſmall advantage to you, would be a great and general diſtaſte, as you cannot but eaſily conceive, to the whole ſtate. And I am the more ſorry for this refuſal of his majeſty's, falling in a time when I was a ſuitor to your lordſhip in a particular concerning myſelf, wherein though your ſervant inſiſted further than, I am ſure, would ever enter into your thoughts, I cannot but take it as a part of a faithful ſervant in him. But if your lordſhip, or your lady, find it inconvenient for you, to part with the houſe, I would rather provide myſelf otherwiſe, than any way incommodate you, but will never ſlack any thing of my affection to do you ſervice; whereof if I have not yet given good proof, I will deſire nothing more, than the fitteſt occaſion to ſhew how much I am

Your Lordſhip's faithful ſervant,

Octob. 1621. G. BUCKINGHAM.

CCLXV. To the Marquis of BUCKINGHAM.

My very good Lord,

AN unexpected accident maketh me haſten this letter to your lordſhip, before I could diſpatch Mr. Meautys; it is that my lord keeper hath ſtayed my pardon at the ſeal. But it is with good reſpect; for he ſaith it ſhall be private, and then he would forthwith write to your lordſhip, and would paſs it if he received your pleaſure; and doth alſo ſhew his reaſon of ſtay, which is, that he doubteth the exception of the ſentence of parliament is not well drawn, nor ſtrong enough; which if it be doubtful, my lord hath great reaſon. But ſure I am, both myſelf, and the king, and your lordſhip, and Mr. Attorney, meant clearly, and I think Mr. Attorney's pen hath gone well. My humble requeſt to your lordſhip is, that for my lord's ſatisfaction Mr. Solicitor may be joined with Mr. Attorney, and if it be ſafe enough, it may go on; if not, it may be amended. I ever reſt

Your Lordſhip's moſt obliged friend and faithful ſervant,

18 October 1621. FR. ST. ALBAN.

CCLXVI. To the Lord St. Alban.

My honourable Lord,

I Have brought your ſervant along to this place, in expectation of the letter from the lord keeper, which your lordſhip mentioneth in yours; but having not yet received it, I cannot make anſwer to the buſineſs you write of. And therefore thought fit not to detain your man here any longer, having nothing elſe to write, but that I always reſt

Your Lordſhip's faithful friend and ſervant,

Hinchenbrook, 20 Oct. 1621. G. Buckingham.

CCLXVII. To the Lord St. Alban.

My noble Lord,

NOW that I am provided of a houſe, I have thought it congruous to give your lordſhip notice thereof, that you may no longer hang upon the treaty, which hath been between your lordſhip and me, touching York-houſe; in which, I aſſure your lordſhip, I never deſired to put you to the leaſt inconvenience. So I reſt

Your Lordſhip's ſervant,

G. Buckingham.

CCLXVIII. To the Lord St. Alban.

My Lord,

I Am glad your lordſhip underſtands me ſo rightly in my laſt letter. I continue ſtill in the ſame mind, for, I thank God, I am ſettled to my contentment; and ſo I hope you ſhall enjoy yours, with the more, becauſe I am ſo well pleaſed in mine. And, my lord, I ſhall be very far from taking it ill, if you part with it to any elſe, judging it alike unreaſonableneſs, to deſire that which is another man's, and to bind him by promiſe or otherwiſe not to let it to another.

My lord, I will move his majeſty to take commiſeration of your long * impriſonment, which, in ſome reſpects, both you and I have reaſon to think harder, than the Tower; you for the help of phyſick, your parley with your creditors, your conference for your writings, and ſtudies, dealing with friends about your buſineſs; and I for this advantage to be ſometimes happy in viſiting and converſing with your lordſhip, whoſe company I am much deſirous to enjoy, as being tied by ancient acquaintance to reſt

Your Lordſhip's faithful friend and ſervant,

G, Buckingham.

* Reſtraint from coming within the verge of the court.

CCLXIX. To the King's moſt excellent Majeſty.

May it pleaſe your Majeſty,

I Acknowledge myſelf in all humbleneſs infinitely bounden to your Majeſty's grace and goodneſs, for that, at the interceſſion of my noble and conſtant friend, my lord marquis, your Majeſty hath been pleaſed to grant me that which the civilians ſay is *res inaeſtimabilis*, my liberty. So that now, whenever God calleth me, I ſhall not die a priſoner. Nay, farther, your Majeſty hath vouchſafed to caſt a ſecond and iterate aſpect of your eye of compaſſion upon me, in referring the conſideration of my broken eſtate to my good lord the treaſurer; which as it is a ſingular bounty in your Majeſty, ſo I have yet ſo much

much left of a late commiſſioner of your treaſure, as I would be ſorry to ſue for any thing that might ſeem immodeſt. Theſe your Majeſty's great benefits, in caſting your bread upon the waters (as the Scripture ſaith) becauſe my thanks cannot any ways be ſufficient to attain, I have raiſed your progenitor, of famous memory (and now, I hope, of more famous memory than before) king Henry VII, to give your Majeſty thanks for me; which work, moſt humbly kiſſing your Majeſty's hands, I do preſent. And becauſe in the beginning of my trouble, when in the midſt of the tempeſt I had a kenning of the harbour, which I hope now by your Majeſty's favour I am entring into, I made a tender to your Majeſty of two works, *An hiſtory of England*, and *A digeſt of your laws*; as I have (by a figure of *pars pro toto*) performed the one, ſo I have herewith ſent your Majeſty, by way of an epiſtle, a new offer of the other. But my deſire is farther, if it ſtand with your Majeſty's good pleaſure, ſince now my ſtudy is my exchange, and my pen my factor, for the uſe of my talent; that your Majeſty (who is a great maſter in theſe things) would be pleaſed to appoint me ſome taſk to write, and that I ſhall take for an oracle. And becauſe my *Inſtauration* (which I eſteem my great work, and do ſtill go on with ſilence) was dedicated to your Majeſty; and this *Hiſtory of king Henry* VII. to your lively and excellent image the prince; if now your Majeſty will be pleaſed to give me a theme to dedicate to my lord of Buckingham, whom I have ſo much reaſon to honour, I ſhould with more alacrity embrace your Majeſty's direction than my own choice. Your Majeſty will pardon me for troubling you thus long. God evermore preſerve and proſper you.

Your Majeſty's poor beadſman moſt devoted,

Gorhambury, 20 Mar. 1621. FR. ST. ALBAN.

CCLXX. To the right honourable his very good lord, the lord marquis of BUCKINGHAM, high admiral of England.

My very good Lord,

THESE main and real favours which I have lately received from your good lordſhip, in procuring my liberty, and a reference of the conſideration of my releaſe, are ſuch, as I now find that in building upon your lordſhip's noble nature and friendſhip, I have built upon the rock, where neither winds nor waves can cauſe overthrow. I humbly pray your lordſhip to accept from me ſuch thanks as ought to come from him whom you have much comforted in fortune, and much more comforted in ſhewing your love and affection to him; of which alſo I have heard by my lord of Falkland, Sir Edward Sackville, Mr. Matthews, and other ways.

I have written, as my duty was, to his majeſty thanks touching the ſame, by the letter I here put into your noble hands.

I have made alſo, in that letter, an offer to his majeſty of my ſervice, for bringing into better order and frame the laws of England: the declaration whereof I have left with Sir Edward Sackville, becauſe it were no good manners to clog his Majeſty, at this time of triumph and recreation, with a buſineſs of this nature; ſo as your lordſhip may be pleaſed to call for it to Sir Edward Sackville when you think the time ſeaſonable.

I am bold likewiſe to preſent your lordſhip with a book of my *Hiſtory of king Henry the ſeventh*. And now that, in ſummer was twelve months, I dedicated a book to his majeſty; and this laſt ſummer, this book to the prince; your lordſhip's turn is next, and this ſummer that cometh (if I live to it) ſhall be yours. I have deſired his majeſty to appoint me the taſk, otherwiſe I ſhall uſe my own choice; for this is the beſt retribution I can make to your lordſhip. God proſper you. I reſt

Your Lordſhip's moſt obliged friend and faithful ſervant,

Gorhambury, this 20th of March 1621. FR. ST. ALBAN.

CCLXXI. To the KING.

It may pleaſe your moſt excellent Majeſty,

IN the midſt of my miſery, which is rather aſſuaged by remembrance, than by hope; my chiefeſt worldly comfort is, to think that ſince the time I had the firſt vote of the commons houſe of parliament for commiſſioner of the union, until the time that I was this laſt parliament choſen by both houſes for their meſſenger to your Majeſty in the petition of religion (which two were my firſt and laſt ſervices) I was evermore ſo happy as to have my poor ſervices graciouſly accepted by your Majeſty, and likewiſe not to have had any of them miſcarry in my hands. Neither of which points I can any ways take to myſelf, but aſcribe the former to your Majeſty's goodneſs, and the latter to your prudent directions; which I was ever careful to have and keep. For as I have often ſaid to your Majeſty, I was towards you but as a bucket and a ciſtern, to draw forth and conſerve; whereas yourſelf was the fountain. Unto this comfort of nineteen years proſperity, there ſucceeded a comfort even in my greateſt adverſity, ſomewhat of the ſame nature; which is, that in thoſe offences wherewith I was charged, there was not any one that had ſpecial relation to your Majeſty, or any your particular commandments. For as towards Almighty God, there are offences againſt the firſt and ſecond table, and yet all againſt God; ſo with the ſervants of kings there are offences more immediate againſt the ſovereign; although all offences againſt law are alſo againſt the king. Unto which comfort there is added this circumſtance, that as my faults were not againſt your Majeſty, otherwiſe than as all faults are; ſo my fall was not your Majeſty's act, otherwiſe than as all acts of juſtice are yours. This I write not to inſinuate with your Majeſty, but as a moſt humble appeal to your Majeſty's gracious remembrance, how honeſt and direct you have ever found me in your ſervice; whereby I have an aſſured belief, that there is in your Majeſty's own princely thoughts a great deal of ſerenity and clearneſs towards me your Majeſty's now proſtrate and caſt down ſervant.

Neither (my moſt gracious ſovereign) do I, by this mention of my ſervices, lay claim to your princely grace and bounty, though the privilege of calamity doth bear that form of petition. I know well, had they been much more, they had been but my bounden duty. Nay, I muſt alſo confeſs, that they were from time to time, far above my merit, over and ſuper-rewarded by your Majeſty's benefits which you heaped upon me. Your Majeſty was and is that maſter to me, that raiſed and advanced me nine times; thrice in dignity, and ſix times in office. The places indeed were the painfulleſt of all your ſervices; but then they had both honour and profits. And the then profits might have maintained my now honour, if I had been wiſe. Neither was your Majeſty's immediate liberality wanting towards me in ſome gifts, if I may hold them. All this I do moſt thankfully acknowledge, and do herewith conclude, that for any thing ariſing from myſelf to move your eye of pity towards me, there is much more in my preſent miſery, than in my paſt ſervices; ſave that the ſame, your Majeſty's goodneſs, that may give relief to the one, may give value to the other.

And indeed, if it may pleaſe your Majeſty, this theme of my miſery is ſo plentiful, as it need not be coupled with any thing elſe. I have been ſome body by your Majeſty's ſingular and undeſerved favour, even the prime officer of your kingdom; your Majeſty's arm hath been often laid over mine in council, when you preſided at the table; ſo near I was. I have borne your Majeſty's image in metal, much more in heart; I was never in nineteen years ſervice chidden by your Majeſty, but contrariwiſe often over-joyed, when your Majeſty would ſometimes ſay, I was a good huſband for you, though none for myſelf: ſometimes, that I had a way to deal in buſineſs *ſuavibus modis*, which was the way which was moſt according to your own heart: and other moſt gracious ſpeeches of affection and truſt, which I feed on to this day.

But why ſhould I ſpeak of theſe things which are now vaniſhed, but only the better to expreſs the downfal?

* Therefore this was wrote near the middle of 1622.

For now it is thus with me: I am a * year and half old in miſery; though I muſt ever acknowledge, not without ſome mixture of your Majeſty's grace and mercy; for I do not think it poſſible, that any one whom you once loved ſhould be totally miſerable. Mine own means, through my own improvidence, are poor and weak, little better than my father left me. The poor things that I have had from your Majeſty, are either in queſtion, or at courteſy. My dignities remain marks of your paſt favour, but burdens of my preſent fortune. The poor remnants which I had of my former fortunes, in plate or jewels, I have ſpread upon poor men unto whom I owed, ſcarce leaving myſelf a convenient ſubſiſtence. So as, to conclude, I muſt pour out my miſery before your Majeſty, ſo far as to ſay, *Si deſeris tu, perimus.*

But as I can offer to your Majeſty's compaſſion little ariſing from myſelf to move you, except it be my extreme miſery, which I have truly laid open; ſo looking up to your Majeſty's own ſelf, I ſhould think I committed Cain's fault, if I ſhould deſpair. Your Majeſty is a king whoſe heart is as unſcrutable for ſecret motions of goodneſs, as for depth of wiſdom. You are creator-like, factive and not deſtructive. You are the prince in whom hath been ever noted an averſation againſt any thing that ſavoured of an hard heart; as, on the other ſide, your princely eye was wont to meet with any motion that was made on the relieving part. Therefore as one that hath had the happineſs to know your Majeſty near hand, I have (moſt gracious ſovereign) faith enough for a miracle, and much more for a grace, that your Majeſty will not ſuffer your poor creature to be utterly defaced, nor blot that name quite out of your book, upon which your ſacred hand hath been ſo oft for the giving him new ornaments and additions.

Unto this degree of compaſſion, I hope God above (of whoſe mercy towards me, both in my proſperity and adverſity, I have had great teſtimonies and pledges, though my own manifold and wretched unthankfulneſs might have averted them) will diſpoſe your princely heart, already prepared to all picty. And why ſhould I not think, but that that thrice noble prince, who would have pulled me out of the fire of a ſentence, will help to pull me (if I may uſe that homely phraſe) out of the mire of an abject and ſordid condition in my laſt days: and that excellent favourite of yours (the goodneſs of whoſe nature contendeth with the greatneſs of his fortune; and who counteth it a prize, a ſecond prize, to be a good friend, after that prize which he carrieth to be a good ſervant) will kiſs your hands with joy for any work of piety you ſhall † do for me. And as all commiſerable perſons (eſpecially ſuch as find their hearts void of all malice) are apt to think that all men pity them, ſo I aſſure myſelf that the lords of your council, who out of their wiſdom and nobleneſs cannot but be ſenſible of human events, will in this way which I go, for the relief of my eſtate, further and advance your Majeſty's goodneſs towards me. For there is, as I conceive, a kind of fraternity between great men that are, and thoſe that have been, being but the ſeveral tenſes of one verb; nay, I do farther preſume, that both houſes of parliament will love their juſtice the better, if it end not in my ruin: for I have been often told, by many of my lords, as it were in the way of excuſing the ſeverity of the ſentence, that they knew they left me in good hands. And your Majeſty knoweth well, I have been all my life long acceptable to thoſe aſſemblies, not by flattery, but by moderation, and by honeſt expreſſing of a deſire to have all things go fairly and well.

† Vouchſafe to expreſs towards me. *Matth.*

But if it may pleaſe your Majeſty (for ſaints I ſhall give them reverence, but no adoration, my addreſs is to your Majeſty, the fountain of goodneſs) your Majeſty ſhall, by the grace of God, not feel that in gift, which I ſhall extremely feel in help; for my deſires are moderate, and my courſes meaſured to a life orderly and reſerved, hoping ſtill to do your Majeſty honour in my way. Only I moſt humbly beſeech your Majeſty to give me leave to conclude with thoſe words which neceſſity ſpeaketh: Help me (dear ſovereign

lord and maſter) and pity me ſo far, as that I, that have borne a bag, be not now in my age forced in effect to bear a wallet; nor that I, that deſire to live to ſtudy, may not be driven to ſtudy to live *. I moſt humbly crave pardon of a long letter, after a long ſilence. God of heaven ever bleſs, preſerve, and proſper your Majeſty.

Your Majeſty's poor ancient ſervant and beadſman,

FR. ST. ALBAN.

* Therefore this was wrote near the middle of 1622.

* Altho' the ſubject matter of this and ſome other letters of the like nature, hath given me occaſion to make ſome remarks thereon already; yet I cannot omit taking notice, in this place, of what the learned Monſieur Le Clerc hath obſerved in the twelfth chapter of his Reflections upon good and bad fortune. Where, in his diſcourſe of liberality, and the obligations that are upon princes, etc. to extend their bounty to learned men, in reſpect of the benefit the world receives from them; he expreſſes his ſenſe of the honour which was due to the memory of thoſe who aſſiſted Eraſmus and Grotius, and his reſentment of the neglect of king James, for deſerting the lord Bacon: "One cannot read, ſaith he, without indignation, that which is "reported of the famous chancellor of England, Francis Bacon, whom the king ſuffer'd to languiſh in poverty, "whilſt he preferr'd worthleſs perſons, to his diſhonour. A little before his death this learned man writ to that "prince a bemoaning letter;" and then cites this moving concluſion out of Howell's letters; which though that author thought it argued a little abjection of ſpirit in my lord Bacon; yet Monſieur Le Clerc thinks it ſhew'd a much lower in the king, to permit ſo able a man to lie under the neceſſity of making ſo ſad a requeſt, and yet withal to afford no relief. *Stephens.*

CCLXXII. To Mr. MATTHEWS, employing him to do a good office with a great man.

SIR,

I Have received your letter, wherein you mention ſome paſſages at large, concerning the lord you know of. You touched alſo that point in a letter which you wrote upon my lord's going over; which I anſwered, and am a little doubtful, whether mine ever came to your hands. It is true, that I wrote a little ſullenly therein; how I conceived that my lord was a wiſe man in his own way, and perhaps thought it fit for him to be out with me; for at leaſt I found no cauſe thereof in myſelf. As for the latter of theſe points, I am of the ſame judgment ſtill; but for the former, I perceive by what you write, that it is merely ſome miſunderſtanding of his: and I do a little marvel at this inſtance, which had relation to that other crabbed man; for I conceived that both in paſſing that book, and (as I remember) two more, immediately after my lord's going over, I had ſhewed more readineſs than many times I uſe in like caſes. But, to conclude, no man hath thought better of my lord than I have done. I know his virtues, and namely, that he hath much greatneſs of mind, which is a thing almoſt loſt amongſt men: nor can any body be more ſenſible and remembring than I am of his former favours; ſo that I ſhall be moſt glad of his friendſhip. Neither are the paſt occaſions in my opinion ſuch, as need either reparation or declaration; but may well go under the title of nothing. Now I had rather you dealt between us than any body elſe, becauſe you are no way drenched in any man's humour. Of other things at another time; but this I was forward to write in the midſt of more buſineſs than ever I had.

† Voudriez to expreſs words more.

CCLXXIII. To the Lord DIGBY, on his going to Spain.

My very good Lord,

I Now only ſend my beſt wiſhes to follow you at ſea and land, with due thanks for your late great favours. God knows whether the length of your voyage will not exceed the ſize of my hour-glaſs: but whilſt I live, my affection to do your lordſhip ſervice ſhall remain quick under the aſhes of my fortune.

CCLXXIV.

CCLXXIV.

SIR,

IN this ſolitude of friends, which is the baſe court of adverſity, where no body almoſt will be ſeen ſtirring, I have often remembred this Spaniſh ſaying, *Amor ſin fin, no tiene fin* [a]. This bids me make choice of your friend and mine, for his noble ſuccours; not now towards the aſpiring, but only the reſpiring of my fortunes. I, who am a man of books, have obſerved, that he hath both the magnanimity of the old Romans, and the cordiality of the old Engliſh; and withal, I believe, he hath the wit of both: ſure I am, that for myſelf I have found him in both my fortunes, to eſteem me ſo much above my juſt value, and to love me ſo much above the poſſibility of deſerving, or obliging on my part, as if he were a friend created and reſerved for ſuch a time as this. You know what I have to ſay to the great lord, and I conceive it cannot paſs ſo fitly to him by the mouth of any, as of this gentleman; and therefore do your beſt (which I know will be of power enough) to engage him both in the ſubſtance and to the ſecrecy of it: for I can think of no man but yourſelf, to be uſed by me in this, who are ſo private, ſo faithful, and ſo diſcreet a friend to us both; as on the other ſide, I dare ſwear he is, and know myſelf to be as true to you as your own heart.

[a] Love without ends hath no end, was a ſaying of Gondomar the Spaniſh ambaſſador; meaning thereby, that if it were begun not upon particular ends, it would laſt. Bacon's Apoph. 67. Vol. I. p. 457.

CCLXXV. An expoſtulation to the Marquis of BUCKINGHAM.

My very good Lord,

YOUR lordſhip will pardon me, if, partly in the freedom of adverſity, and partly of former friendſhip (the ſparks whereof cannot but continue) I open myſelf to your lordſhip, and deſire alſo your lordſhip to open yourſelf to me. The two laſt acts which you did for me, in procuring the releaſement of my fine, and my *Quietus eſt*, I acknowledge, were effects real and material of your love and favour; which, as to my knowledge, it never failed in my proſperity, ſo in theſe two things it ſeems not to have turned with the wheel. But the extent of theſe two favours is not much more than to keep me from perſecution. For any thing farther, which might tend to my comfort and aſſiſtance, as I cannot ſay to myſelf, that your lordſhip hath forſaken me; ſo I ſee not the effects of your undeſerved, yea undeſired profeſſions and promiſes; which being made to a perſon in affliction, have the nature, after a ſort, of vows. But that which moſt of all makes me doubt of a change or cooling in your lordſhip's affection towards me, is, that being twice now at London, your lordſhip did not vouchſafe to ſee me; though by meſſages you gave me hope thereof, and the latter time I had begg'd it of your lordſhip.

The cauſe of change may either be in myſelf or your lordſhip. I ought firſt to examine myſelf, which I have done; and God is my witneſs, I find all well, and that I have approved myſelf to your lordſhip a true friend, both in the watery trial of proſperity, and in the fiery trial of adverſity. If your lordſhip take any inſatisfaction touching the houſe, I humbly pray you think better of it. For that motion to me was a ſecond ſentence more grievous than the firſt, as things then ſtood, and do yet ſtand: for it ſentenced me to have loſt both in my own opinion, and much more in the opinion of others, that which was ſaved to me, almoſt only, in the former ſentence; and which was more dear to me than all that which was taken from me, which is your lordſhip's love and favour. For had it not been for that bitter circumſtance, your lordſhip knows, that you might have commanded my life, and all that is mine. But ſurely it could not be that, nor any thing in me, which wrought the change. It is likely on the other part, that though your lordſhip in your nature

I know to be generous and conſtant, yet I being now become out of ſight, and out of uſe, your lordſhip having a flood of new friends, and your ears poſſeſſed perhaps by ſuch as would not leave room for an old; your lordſhip may, even by courſe of the world, and the over-bearing of others, be turned from me; and it were almoſt a miracle if it ſhould be otherwiſe. But yet, becauſe your lordſhip may ſtill have ſo heroical a ſpirit, as to ſtand out in all theſe violent aſſaults, which might have alienated you from your friend; my humble ſuit to your lordſhip is, that remembring our former friendſhip, which began with your beginnings, and ſince that time hath never failed on my part, your lordſhip would deal clearly with me, and let me know, whether I continue in your favour or no; and whether in thoſe poor requeſts, which I may yet make to his majeſty (whoſe true ſervant I ever was and am) for the tempering of my miſery, I may preſume to uſe your lordſhip's favour and help as I have done; for otherwiſe it were a kind of ſtupidneſs in me, and a great trouble alſo to your lordſhip, for me not to diſcern the change, for your lordſhip to have an importuner, inſtead of a friend and a ſuitor. Though howſoever, if your lordſhip ſhould never think of me more, yet in reſpect of your former favours, which cannot altogether be made void, I muſt remain, etc.

CCLXXVI. To the Lord St. Alban.

My Lord,

I Have diſpatched the buſineſs your lordſhip recommended to me, which I ſend your lordſhip here incloſed, ſigned by his majeſty, and have likewiſe moved him for your coming to kiſs his hand, which he is pleaſed you ſhould do at Whitehall when he returneth next thither. In the mean time I reſt

Your Lordſhip's faithful friend and ſervant,

Newmarket, 13 Nov. 1622. G. Buckingham.

I will give order to my ſecretary to wait upon Sir John Suckling about your other buſineſs.

Endorſed by the Lord St. Alban's hand,

My Lord of Bucks touching my warrant and acceſs.

CCLXXVII. To the Marquis of Buckingham.

Excellent Lord,

THOUGH I have troubled your lordſhip with many letters, oftner than I think I ſhould (ſave that affection keepeth no account) yet upon the repair of Mr. Matthew, a gentleman ſo much your lordſhip's ſervant, and to me another myſelf, as your lordſhip beſt knoweth, you would not have thought me a man alive, except I had put a letter into his hand, and withal, by ſo faithful and approved a man, commended my fortunes afreſh unto your lordſhip.

My lord, to ſpeak my heart to your lordſhip, I never felt my misfortunes ſo much as now: not for that part which may concern myſelf, who profit (I thank God for it) both in patience, and in ſettling mine own courſes; but when I look abroad and ſee the times ſo ſtirring, and ſo much diſſimulation and falſhood, baſeneſs and envy in the world, and ſo many idle clocks going in mens heads, then it grieveth me much, that I am not ſometimes at your lordſhip's elbow, that I might give you ſome of the fruits of the careful advice, modeſt liberty, and true information of a friend that loveth your lordſhip as I do. For though your lordſhip's fortunes be above the thunder and ſtorms of inferior regions; yet nevertheleſs, to hear the wind and not to feel it, will make one ſleep the better.

My good lord, ſomewhat I have been, and much I have read; ſo that few things that concern ſtates or greatneſs, are new caſes unto me: and therefore I hope I may be no unprofitable ſervant to your lordſhip. I remember the King was wont to make a character of me, far above my worth, *that*

I was not made for ſmall matters; and your lordſhip would ſometimes bring me from his majeſty that Latin ſentence, *De minimis non curat lex:* and it hath ſo fallen out, that ſince my retiring, times have been fuller of great matters than before; wherein perhaps, if I had continued near his majeſty, he might have found more uſe of my ſervice, if my gift lay that way: but that is but a vain imagination of mine. True it is, that as I do not aſpire to uſe my talent in the king's great affairs; yet for that which may concern your lordſhip, and your fortune, no man living ſhall give you a better account of faith, induſtry, and affection, than I ſhall. I muſt conclude with that which gave me occaſion of this letter, which is Mr. Matthew's employment to your lordſhip in thoſe parts, wherein I am verily perſuaded your lordſhip ſhall find him a wiſe and able gentleman, and one that will bend his knowledge of the world (which is great) to ſerve his majeſty, and the prince, and in eſpecial your lordſhip. So I reſt

Your Lordſhip's moſt obliged and faithful ſervant,

Gray's-Inn, this 18 April, 1623. FR. ST. ALBAN.

CCLXXVIII. To the Marquis of BUCKINGHAM.

My very good Lord,

THOUGH I returned an anſwer to your lordſhip's laſt honourable and kind letter, by the ſame way by which I received it; yet I humbly pray your lordſhip to give me leave to add theſe few lines. My lord, as God above is my witneſs, that I ever have loved and honoured your lordſhip as much, I think, as any ſon of Adam can love or honour any thing that is a ſubject; and do ſtill continue in as hearty and ſtrong wiſhes of felicity to be heaped and fixed upon you as ever: ſo yet I proteſt, that at this time, as low as I am, I had rather ſojourn the reſt of my life in a college in Cambridge, than recover a good fortune by any other than yourſelf. But now to recover yourſelf to me (if I have you not already) or to eaſe your lordſhip in any buſineſs of mine, wherein your lordſhip would not ſo fully appear, or to be made partaker of your favours, in the way that you like beſt; I would uſe any man who were your lordſhip's friend. Secondly, If in any thing of my former letters I have given your lordſhip any diſtaſte, either by the ſtyle of them, or any particular paſſage in them, I humbly pray your lordſhip's benign conſtruction and pardon. I confeſs it is my fault, though yet it be ſome happineſs to me withal, that I many times forget my adverſity; but I ſhall never forget to be, *etc.*

CCLXXIX. To the Duke of BUCKINGHAM.

Excellent Lord,

HOW much I rejoice in your grace's ſafe return, you will eaſily believe, knowing how well I love you, and how much I need you. There be many things in this journey both in the felicity and in the carriage thereof, that I do not a little admire, and wiſh your grace may reap more and more fruits in continuance anſwerable to the beginnings. Myſelf have ridden at anchor all your grace's abſence, and my cables are now quite worn. I had from Sir Toby Mathew, out of Spain, a very comfortable meſſage, that your grace had ſaid, I ſhould be the firſt that you would remember in any great favour after your return; and now coming from court, he telleth me he had commiſſion from your lordſhip to confirm it: for which I humbly kiſs your hands.

My lord, do ſome good work upon me, that I may end my days in comfort, which nevertheleſs cannot be complete except you put me in ſome way to do your noble ſelf ſervice; for I muſt ever reſt

Your Grace's moſt obliged and faithful ſervant,

12 Oct. 1623. FR. ST. ALBAN.

I have written to his highneſs, and had preſented my duty to his highneſs to kiſs his hands at York-houſe, but that my health is ſcarce yet confirmed.

CCLXXX. To the Lord St. Alban.

My Lord,

THE aſſurance of your love makes me eaſily believe your joy at my return; and if I may be ſo happy, as by the credit of my place to ſupply the decay of your cables, I ſhall account it one of the ſpecial fruits thereof. What Sir Toby Mathew hath delivered on my behalf, I will be ready to make good, and omit no opportunity that may ſerve for the endeavours of

Your Lordſhip's faithful friend and ſervant,

Royſton, 14 Oct. 1623. G. Buckingham.

CCLXXXI. To the Duke of Buckingham.

Excellent Lord,

I Send your grace for a parabien, a book of mine, written firſt and dedicated to his majeſty in Engliſh, and now tranſlated into Latin and enriched. After his majeſty and his highneſs, your grace is ever to have the third turn with me. Vouchſafe of your wonted favour to preſent alſo the king's book to his majeſty. The prince's I have ſent to Mr. Endimion Porter. I hope your grace (becauſe you are wont to diſable your Latin) will not ſend your book to the Conde d'Olivares, becauſe he was a deacon; for I underſtand by one (that your grace may gueſs whom I mean) that the Conde is not rational, and I hold this book to be very rational. Your grace will pardon me to be merry, however the world goeth with me. I ever reſt

Your Grace's moſt faithful and obliged ſervant,

Gray's-Inn, this 22d October 1623. Fr. St. Alban.

I have added a begging poſtſcript in the king's letter; for, as I writ before, my cables are worn out, my hope of tackling is by your lordſhip's means. For me and mine I pray command.

CCLXXXII. To the Lord St. Alban.

My Lord,

I Give your lordſhip many thanks for the parabien you have ſent me; which is ſo welcome unto me, both for the author's ſake and for the worth of it ſelf, that I cannot ſpare a work, of ſo much pains to your lordſhip and value to me, unto a man of ſo little reaſon and leſs art; who, if his ſkill in languages be no greater than I found it in argument, may, perhaps, have as much need of an interpreter (for all his deaconry) as myſelf; and whatſoever mine ignorance is in the tongue, yet this much I underſtand in the book, that it is a noble monument of your love, which I will entail to my poſterity, who, I hope, will both reap the fruit of the work, and honour the memory of the author. The other book I delivered to his majeſty, who is tied here by the feet longer than he purpoſed to ſtay.

For the buſineſs your lordſhip wrote of in your other letters, I am ſorry I can do you no ſervice, having engaged myſelf to Sir William Becher before my going into Spain, ſo that I cannot free myſelf, unleſs there were means to give him ſatisfaction. But I will ever continue

Your Lordſhip's aſſured friend and ſervant,

Hinchenbrook, 27 Oct. 1623. G. Buckingham.

CCLXXXIII.

CCLXXXIII. To the Lord St. Alban.

My honourable Lord,

I Have deliver'd your lordſhip's letter and your book to his majeſty, who hath promiſed to read it over: I wiſh I could promiſe as much for that which you ſent me, that my underſtanding of that language might make me capable of thoſe good fruits, which, I aſſure myſelf by an implicit faith, proceed from your pen. But I will tell you in good Engliſh, with my thanks for your book, that I ever reſt

Your Lordſhip's faithful friend and ſervant,

Hinchenbrook, 29 Oct. 1623. G. Buckingham.

CCLXXXIV. To the Duke of Buckingham.

Excellent Lord,

I Send Mr. Parker to have ready, according to the ſpeech I had with your grace, my two ſuits to his majeſty, the one for a full pardon, that I may die out of a cloud; the other for the tranſlation of my honours after my deceaſe. I hope his majeſty will have compaſſion on me, as he promiſed me he would. My heart telleth me that no man hath loved his majeſty and his ſervice more entirely, and love is the law and the prophets. I ever reſt

Your Grace's moſt obliged and faithful ſervant,

25 Nov. 1623. Fr. St. Alban.

CCLXXXV. To the Lord St. Alban.

My honourable Lord,

I Have received your lordſhip's letter, and have been long thinking upon it, and the longer the leſs able to make anſwer unto it. Therefore if your lordſhip would be pleaſed to ſend any underſtanding man unto me, to whom I may in diſcourſe open myſelf, I will by that means ſo diſcover my heart with all freedom (which were too long to do by letter, eſpecially in this time of parliament buſineſs) that your lordſhip ſhall receive ſatisfaction. In the mean time I reſt

Your Lordſhip's faithful ſervant,

Royſton, 16 December. G. Buckingham.

CCLXXXVI. To the Lord St. Alban.

My Lord,

I Have moved his majeſty in your ſuit, and find him very gracious inclined to grant it; but he deſireth firſt to know from my lord treaſurer his opinion and the value of it: to whom I have written to that purpoſe this incloſed letter, and would wiſh your lordſhip to ſpeak with him yourſelf for his favour and furtherance therein; and for my part I will omit nothing that appertaineth to

Your Lordſhip's faithful friend and ſervant,

Newmarket, 28th of January, 1623. G. Buckingham.

CCLXXXVII. To the Duke of BUCKINGHAM.

Excellent Lord,

I Have received the warrant, not for land but for the money, which if it may be ſpeedily ſerved, is ſure the better; for this I humbly kiſs your grace's hands. But becauſe the exchequer is thought to be ſomewhat barren, although I have good affiance of Mr. Chancellor, yet I hold it very eſſential (and three-in I moſt humbly pray your grace's favour) that you would be pleaſed by your letter to recommend to Mr. Chancellor the ſpeedy iſſuing of the money by this warrant, as a buſineſs whereof your grace hath an eſpecial care; the rather for that I underſtand from him, there be ſome other warrants for money to private ſuitors at this time on foot. But your grace may be pleaſed to remember this difference: that the other are mere gifts; this of mine is a bargain, with an advance only.

I moſt humbly pray your grace likewiſe to preſent my moſt humble thanks to his majeſty. God ever guide you by the hand. I always reſt

Your faithful and more and more obliged ſervant,

Gray's-Inn, this 17th of November, 1624.

FR. ST. ALBAN.

I moſt humbly thank your grace for your grace's favour to my honeſt deſerving ſervant.

CCLXXXVIII. To the Lord ST. ALBAN.

My noble Lord,

THE hearty affection I have borne to your perſon and ſervice, hath made me ever ambitious to be a meſſenger of good news to you, and an eſchewer of ill; this hath been the true reaſon why I have been thus long in anſwering you, not any negligence in your diſcreet modeſt ſervant, you ſent with your letter, nor his who now returns you this anſwer, oft-times given me by your maſter and mine; who though by this may ſeem not to ſatisfy your deſert and expectation, yet, take the word of a friend who will never fail you, hath a tender care of you, full of a freſh memory of your by-paſt ſervice. His majeſty is but for the preſent, he ſays, able to yield unto the three years advance, which if you pleaſe to accept, you are not hereafter the farther off from obtaining ſome better teſtimony of his favour worthier both of him and you, though it can never be anſwerable to what my heart wiſhes you, as

Your Lordſhip's humble ſervant,

G. BUCKINGHAM.

CCLXXXIX. To the lord [a] Treaſurer MARLBOROUGH, expoſtulating about his unkindneſs and injuſtice.

My Lord,

I Humbly entreat your lordſhip, and (if I may uſe the word) adviſe you to make me a better anſwer. Your lordſhip is intereſted in honour, in the opinion of all them who hear how I am dealt with; if your lordſhip malice me for ſuch a cauſe, ſurely it was one of the juſteſt buſineſſes that ever was in chancery. I will avouch it; and how deeply I was tempted therein, your lordſhip knows beſt. Your lordſhip may do well, in this great age of yours, to think of your grave, as I do of mine; and to beware of hardneſs of heart. And as for fair words, it is a wind, by which neither your lordſhip, nor any man elſe, can ſail long. Howſoever, I am the man who will give all due reſpects and reverence to your great place, *etc.*

[a] The lord Marlborough was made treaſurer 22 Dec. 1624. 22 Jac.

CCXC. To the KING.

Moſt gracious and dread Sovereign,

BEFORE I make my petition to your Majeſty, I make my prayers to God above, *pectore ab imo*, that if I have held any thing ſo dear as your Majeſty's ſervice; nay, your heart's eaſe, and your honour's, I may be repulſed with a denial: but, if that hath been the principal with me, that God, who knoweth my heart, would move your Majeſty's royal heart to take compaſſion of me, and to grant my deſire.

I proſtrate myſelf at your Majeſty's feet, I, your ancient ſervant, now ſixty-four years old in age, and three years five months old in miſery. I deſire not from your Majeſty, means, nor place, nor employment, but only, after ſo long a time of expiation, a complete and total remiſſion of the ſentence of the upper houſe, to the end that blot of ignominy may be removed from me, and from my memory with poſterity; that I die not a condemned man, but may be to your Majeſty, as I am to God, *nova creatura*. Your Majeſty hath pardoned the like to Sir John Bennet, between whoſe caſe and mine (not being partial with myſelf, but ſpeaking out of the general opinion) there was as much difference, I will not ſay as between black and white, but as between black and grey, or aſh-coloured[a]: look therefore down, dear ſovereign, upon me alſo in pity. I know your Majeſty's heart is inſcrutable for goodneſs; and my lord of Buckingham was wont to tell me, you were the beſt natured man in the world; and it is God's property, that thoſe he hath loved, he loveth to the end. Let your Majeſty's grace, in this my deſire, ſtream down upon me, and let it be out of the fountain and ſpring-head, and *ex mero motu*, that, living or dying, the print of the goodneſs of king James may be in my heart, and his praiſes in my mouth. This my moſt humble requeſt granted, may make me live a year or two happily; and denied, will kill me quickly. But yet the laſt thing that will die in me, will be the heart and affection of

Your Majeſty's moſt humble, and true devoted ſervant,

July 30. 1624. FR. ST. ALBAN.

[a] Sir John Bennet, judge of the prerogative court, was in the year 1621 accuſed, convicted, and cenſured in parliament for taking of bribes, and committing ſeveral miſdemeanors relating to his office.

CCXCI. In anſwer to the foregoing, by king JAMES.

To our truſty and well-beloved, Thomas Coventry, *our Attorney-General.*

Truſty and Well-beloved, we greet you well:

Cabala, 270. Ed. 1663. WHEREAS our right truſty and right well-beloved couſin, the viſcount of St. Alban, upon a ſentence given in the upper houſe of parliament full three years ſince, and more, hath endured loſs of his place, impriſonment, and confinement[a] alſo for a great time; which may ſuffice for the ſatisfaction of juſtice, and example to others: we, being always graciouſly inclined to temper mercy with juſtice, and calling to mind his former good ſervices, and how well and profitably he hath ſpent his time ſince his troubles, are pleaſed to remove from him that blot of ignominy which yet remaineth upon him, of incapacity and diſablement; and to remit to him all penalties whatſoever inflicted by that ſentence. Having therefore formerly pardoned his fine, and releaſed his confinement; theſe are to will and require you to prepare, for our ſignature, a bill containing a pardon, in due form of law, of the whole ſentence: for which this ſhall be your ſufficient warrant.

[a] His ſentence forbid his coming within the verge of the court. [In conſequence of this letter, my lord Bacon was ſummoned to parliament in the firſt year of king Charles.]

CCXCII. The lord Viſcount St. Alban to [a] Dr. Williams, biſhop of Lincoln, concerning his ſpeeches, *etc.*

My very good Lord,

I Am much bound to your lordſhip for your honourable promiſe to Dr. Rawley: he chuſeth rather to depend upon the ſame in general, than to pitch upon any particular; which modeſty of choice I commend.

I find that the ancients (as Cicero, Demoſthenes, Plinius Secundus, and others) have preſerved both their orations and their epiſtles. In imitation of whom I have done the like to my own; which nevertheleſs I will not publiſh while I live: but I have been bold to bequeath them to your lordſhip, and Mr. Chancellor of the duchy. My ſpeeches (perhaps) you will think fit to publiſh: the letters, many of them, touch too much upon late matters of ſtate, to be publiſhed; yet I was willing they ſhould not be loſt. I have alſo by my will erected two lectures in perpetuity, in either univerſity one, with an endowment of 200 *l. per annum* a piece: they to be for natural philoſophy, and the ſciences thereupon depending; which foundations I have required my executors to order, by the advice and direction of your lordſhip, and my lord biſhop of Coventry and Lichfield. Theſe be my thoughts now. I reſt

Your Lordſhip's moſt affectionate to do you ſervice.

[a] This title ſeems to imply that the date of this letter was after the biſhop was remov'd from being lord keeper.

CCXCIII. The biſhop's anſwer to the preceding letter.

Right honourable and my very noble Lord,

MR. Doctor Rawley, by his modeſt choice, hath much obliged me to be careful of him, when God ſhall ſend any opportunity; and, if his majeſty ſhall remove me from this ſee, before any ſuch occaſion be offered, not to change my intentions with my biſhoprick.

It is true that thoſe ancients, Cicero, Demoſthenes, and Plinius Secundus, have preſerved their orations (the heads and effects of them at the leaſt) and their epiſtles; and I have ever been of opinion, that thoſe two pieces are the principal pieces of our antiquities: thoſe orations diſcovering the form of adminiſtring juſtice, and the letters the carriage of the affairs in thoſe times. For our hiſtories (or rather lives of men) borrow as much from the affections and phantaſies of the writers, as from the truth itſelf, and are for the moſt of them built altogether upon unwritten relations and traditions. But letters written *e re nata*, and bearing a ſynchroniſm or equality of time *cum rebus geſtis*, have no other fault, than that which was imputed unto Virgil, *nihil peccat, niſi quod nihil peccet*; they ſpeak the truth too plainly, and caſt too glaring a light for that age, wherein they were, or are written.

Your lordſhip doth moſt worthily therefore in preſerving thoſe two pieces, amongſt the reſt of thoſe matchleſs monuments you ſhall leave behind you; conſidering, that as one age hath not bred your experience, ſo is it not fit it ſhould be confined to one age, and not imparted to the times to come. For my part therein, I do embrace the honour with all thankfulneſs, and the truſt impoſed upon me with all religion and devotion. For thoſe two lectures in natural philoſophy, and the ſciences woven and involved with the ſame; it is a great and a noble foundation both for the uſe, and the ſalary, and a foot that will teach the age to come, to gueſs in part at the greatneſs of that Herculean mind, which gave them their exiſtence. Only your lordſhip may be adviſed for the ſeats of this foundation. The two univerſities are the two eyes of this land, and fitteſt to contemplate the luſtre of this bounty: theſe two lectures, are as the two apples of theſe eyes. An apple when it is ſingle is an ornament, when double a pearl, or a blemiſh in the eye. Your lordſhip may therefore inform yourſelf if one Sidley of Kent hath

hath not already founded in Oxford a lecture of this nature and condition. But if Oxford in this kind be an Argus, I am ſure poor Cambridge is a right Polyphemus; it hath but one eye, and that not ſo ſteadily or artificially placed; but, *bonum eſt facile ſui diffuſivum*; your lordſhip being ſo full of goodneſs, will quickly find an object to pour it on. That which made me ſay thus much, I will ſay in verſe, that your lordſhip may remember it the better;

Sola ruinoſis ſtat Cantabrigia pannis,
Atque inopi lingua diſertas invocat artes.

I will conclude with this vow: *Deus, qui animum iſtum tibi, animo iſti tempus quam longiſſimum tribuat.* It is the moſt affectionate prayer of

Your Lordſhip's moſt humble ſervant,

Buckden, the laſt of December, 1625.

JO. LINCOLN.

CCXCIV. To the [a] Queen of BOHEMIA. 1625.

It may pleaſe your Majeſty,

I Have received your Majeſty's gracious letter from Mr. Secretary Moreton, who is now a ſaint in heaven. It was at a time when the great deſolation of the plague was in the city, and when myſelf was ill of a dangerous and tedious ſickneſs. The firſt time that I found any degree of health, nothing came ſooner to my mind, than to acknowledge your Majeſty's great favour, by my moſt humble thanks: and becauſe I ſee your Majeſty taketh delight in my writings (and to ſay the truth, they are the beſt fruits I now yield) I preſume to ſend your Majeſty a little diſcourſe of mine, touching † a war with Spain, which I writ about two years ſince; which the king your brother liked well. It is written without bitterneſs or invective, as kings affairs ought to be carried; but, if I be not deceived, it hath edge enough. I have yet ſome ſpirits left, and remnant of experience, which I conſecrate to the king's ſervice, and your Majeſty's; for whom I pour out my daily prayers to God, that he would give your Majeſty a fortune worthy your rare virtues; which, ſome good ſpirit tells me, will be in the end. I do in all reverence kiſs your Majeſty's hands, ever reſting

† See Vol. I.

Your Majeſty's moſt humble and devoted ſervant,

FR. ST. ALBAN.

[a] The princeſs Elizabeth, eldeſt daughter of king James, was married to Frederick V. elector palatine, who by accepting the crown of Bohemia, was ſoon deprived both of that and his ancient principality. Under all her afflictions ſhe had the happineſs of being mother of many fine children, and at length of ſeeing her ſon reſtored to the Palatinate, and her nephew to his kingdoms. To her, who had been ſo much injur'd by Spain, my lord St. Alban preſents his diſcourſe touching a war with Spain, in acknowledgment of the favour of her majeſty's letter, ſent by her ſecretary Sir Albertus Moreton; in which quality he had ſerv'd his uncle Sir Henry Wotton, in ſome of his embaſſies: and as he was tenderly beloved by him in his life, and much lamented in his death; ſo Sir Harry profeſſed no leſs admiration of this queen, and the ſplendour of her virtues under the darkneſs of her fortunes. *Stephens.*

CCXCV. A letter of the Lord BACON's, in French, to the Marquis FIAT, relating to his *Eſſays.*

Monſieur l'Ambaſſadeur mon File,

VOYANT que voſtre excellence faict & traite mariages, non ſeulement entre les princes d'Angleterre & de France, mais auſſi entre les langues (puis que faictes traduire mon livre de *l'Advancement des ſciences* en Francois) j'ai bien voulu vous envoyer mon livre dernierement imprimé, que j'avois pourveu pour vous, mais j'eſtois en doubte de le vous envoyer, pour ce qu'il eſtoit eſcrit en Anglois. Mais à ceſt heure pour la raiſon ſuſdicte je le vous envoye. C'eſt un recompilement de mes *Eſſayes morales & civiles*; mais tellement enlargiés & enrichiés, tant de nombre que de poids, que c'eſt de fait un œuvre nouveau. Je vous baiſe les mains, & reſte

Voſtre très affectioné ami, & très humble ſerviteur.

CCXCVI. To the Earl of ARUNDEL and SURREY: juſt before his death, being the laſt letter he ever wrote.

My very good Lord,

I Was likely to have had the fortune of Caius Plinius the elder, who loſt his life by trying an experiment about the burning of the mountain Veſuvius: for I was alſo deſirous to try an experiment or two, touching the conſervation and induration of bodies. As for the experiment itſelf, it ſucceeded excellently well; but in the journey (between London and Highgate) I was taken with ſuch a fit of caſting, as I knew not whether it were the ſtone, or ſome ſurfeit, or cold, or indeed a touch of them all three. But when I came to your lordſhip's houſe, I was not able to go back, and therefore was forced to take up my lodging here, where your houſe-keeper is very careful and diligent about me; which I aſſure myſelf your lordſhip will not only pardon towards him, but think the better of him for it. For indeed your lordſhip's houſe was happy to me; and I kiſs your noble hands for the welcome which I am ſure you give me to it, *etc.*

I know how unfit it is for me to write to your lordſhip with any other hand than my own; but by my troth my fingers are ſo disjointed with this fit of ſickneſs, that I cannot ſteadily hold a pen.

THE LAST WILL OF FRANCIS BACON Viſcount ST. ALBAN.

E. Regr. Curiae Praerogat. Cantuariae extract.

FIRST, I bequeath my ſoul and body into the hands of God by the bleſſed oblation of my Saviour; the one at the time of my diſſolution, the other at the time of my reſurrection. For my burial, I deſire it may be in St. Michael's church near St. Albans: there was my mother buried, and it is the pariſh church of my manſion houſe of Gorhambury, and it is the only chriſtian church within the walls of Old Verulam. I would have the charge of my funeral not to exceed three hundred pounds at the moſt.

For my name and memory, I leave it to mens charitable ſpeeches, and to foreign nations, and the next ages. But as to that durable part of my memory, which conſiſteth in my works and writings, I deſire my executors, and eſpecially Sir John Conſtable and my very good friend Mr. Boſvile, to take care that of all my writings, both of Engliſh and of Latin, there may be books fair bound, and placed in the king's library, and in the library of the univerſity of Cambridge, and in the library of Trinity college, where myſelf was bred, and in the library of Bennet college, where my father was bred, and in the library of the univerſity of Oxonford, and in the library of my lord of Canterbury, and in the library of Eaton.

Alſo whereas I have made up two regiſter books, the one of my orations or ſpeeches, the other of my epiſtles or letters, whereof there may be uſe; and yet becauſe they touch upon buſineſs of ſtate, they are not fit to be put into the hands but of ſome counſellor, I do deviſe and bequeath them to the right honourable my very good lord the lord biſhop of Lincoln, and the chancellor of his majeſty's duchy of Lancaſter. Alſo I deſire my executors, eſpecially my brother Conſtable, and alſo Mr. Boſvile, preſently after my deceaſe to take into their hands all my papers whatſoever, which are either in cabinets, boxes, or preſſes, and them to ſeal up until they may at their leiſure peruſe them.

I give and bequeath unto the poor of the pariſhes where I have at any time reſted in my pilgrimage, ſome little relief according to my poor means; to the poor of St. Martin's in the fields, where I was born, and lived in my firſt and laſt days, forty pounds; to the poor of St. Michael's near St. Albans, where I deſire to be buried, becauſe the day of death is better than the day of birth, fifty pounds; to the poor of St. Andrew's in Holborn, in reſpect of my long abode in Grays-Inn, thirty pounds; to the poor of the abbey church pariſh in St. Albans, twenty pounds; to the poor of St. Peter's there, twenty pounds; to the poor of St. Stephen's there, twenty pounds; to the poor of Redborn twenty pounds; to the poor of Hemſtead, where I heard ſermons and prayers to my comfort in the time of the former great plague, twenty pounds; to the poor of Twickenham, where I lived ſome time at Twickenham park, twenty pounds. I intreat Mr. Shute of Lombard-ſtreet to preach my funeral ſermon, and to him in that reſpect I give twenty pounds; or if he cannot be had, Mr. Peterſon my late chaplain, or his brother.

Deviſes and legacies to my wife: I give grant and confirm to my loving wife, by this my laſt will, whatſoever hath been aſſured to her, or mentioned or intended to be aſſured to her by any former deed, be it either my lands in Hertfordſhire, or the ſarm of the ſeal, or the gift of goods, in accompliſhment of my covenants of marriage; and I give her alſo the ordinary ſtuff at Gorhambury, as wainſcot tables, ſtools, bedding, and the like (always reſerving and excepting the rich hangings with their covers, the table carpets, and the long cuſhions, and all other ſtuff which was or is uſed in the long gallery; and alſo a rich chair, which was my niece Cæſar's gift, and alſo the armour, and alſo all tables of marble and towch.) I give alſo to my wife my four coach geldings and my beſt caroache, and her own coach mares and caroache: I give alſo and grant to my wife the one half of the rent which was reſerved upon Reade's leaſe for her life; which rent although I intended to her merely for her better maintenance while ſhe lived at her own charge, and not to continue after my death, yet becauſe ſhe has begun to receive it, I am content to continue it to her; and I conceive by this advancement, which firſt and laſt I have left her, beſides her own inheritance, I have made her of competent abilities to maintain the eſtate of a viſcounteſs, and given ſufficient tokens of my love and liberality towards her; for I do reckon (and that with the leaſt) that Gorhambury and my lands in Hertfordſhire, will be worth unto her ſeven hundred pounds *per annum*, beſides woodfells, and the leaſes of the houſes, whereof five hundred pounds *per annum* only I was tied unto by covenants upon marriage: ſo as the two hundred pounds and better was mere benevolence; the ſix hundred pounds *per annum* upon the farm of the writs, was likewiſe mere benevolence; her own inheritance alſo, with that ſhe purchaſed with part of her portion, is two hundred pounds *per annum* and better, beſides the wealth ſhe hath in jewels, plate, or otherwiſe, wherein I was never ſtrait-handed. All which I here ſet down, not becauſe I think it too much, but becauſe others may not think it leſs than it is.

Legacies to my friends: I give unto the right honourable my worthy friend the marquis Fiatt, late lord ambaſſador of France, my books of oriſons or pſalms curiouſly rhymed: I give unto the right honourable my noble friend Edward earl of Dorſet, my ring, with the cruſhed diamond, which the king that now is gave me when he was prince: I give unto my right honourable friend the lord Cavendiſh, my caſting bottle of gold: I give to my brother Conſtable all my books, and one hundred pounds to be preſented to him in gold; I give to my ſiſter Conſtable ſome jewels, to be bought for her of the value of fifty pounds: I give to Nall her daughter ſome jewels, to be bought for her of the value of forty pounds: I give to my lady Cooke ſome jewels, to be bought for her of the value of fifty pounds: And to her daughter Anne Cooke, to buy her a jewel, forty pounds: And to her ſon Charles, ſome little jewel to the value of thirty pounds. I will alſo that my executors ſell my chambers in Grays-Inn, which (now the leaſe is full) I conceive may yield ſome three hundred pounds; one hundred pounds for the ground ſtory, and two hundred pounds for the third and fourth ſtories; which money, or whatſoever it be, I deſire my executors to beſtow for ſome little preſent relief upon twenty five poor ſcholars in both univerſities, fifteen in Cambridge and ten in Oxonford. I give to Mr. Thomas Meautis, ſome jewel to be bought for him of the value of fifty pounds, and my foot-cloth horſe: I give to my ancient good friend Sir Toby Matthews, ſome ring to be bought for him of the value of thirty pounds: I give to my very good friend Sir Chriſtopher Darcy, ſome ring to be bought for him of the value of thirty pounds: I give to Mr. Henry Percy one hundred pounds: I give to Mr Henry Goodricke forty pounds: I give to my god-ſon Francis Lowe ſon of Humphrey Lowe, one hundred and fifty pounds: I give to my god-ſon Francis Hatcher ſon of Mr. William Hatcher, one hundred pounds: I give to my god-ſon Francis Fleetwood ſon of Henry Fleetwood, Eſq; fifty pounds: I give to my god-ſon Philips ſon of auditor Philips, twenty pounds: I give to every of my executors a piece of plate of thirty pounds value.

Legacies

Legacies to my ſervants now, or late ſervants: I give to my ſervant Robert Halpeny four hundred pounds, and the one half of my proviſions of hay, firewood, and timber, which ſhall remain at the time of my deceaſe: I give to my ſervant Stephen Paiſe three hundred and fifty pounds, and my bed with the appurtenances, bed linen and apparel linen, as ſhirts, pillowbiers, ſheets, caps, handkerchiefs, etc. I give to my ſervant Wood three hundred and thirty pounds, with all my apparel, as doublets, hoſe, and to his wife ten pounds: I give to my late ſervant Francis Edney two hundred pounds, and my rich gown: I give to my ancient ſervant Troughton one hundred pounds: I give to my chaplain Dr. Rawleigh one hundred pounds: I give to my ancient ſervant Welles one hundred pounds: I give to my ancient ſervant Fletcher one hundred pounds, and to his brother ten pounds; and if my ſervant Fletcher be dead, then the whole to his brother: I give to my wife's late waiting gentlewoman Mrs. Wagſtaffe one hundred pounds: I give to Morrice Davis one hundred pounds: I give to old John Bayes one hundred pounds: I give to my ancient ſervant Woder threeſcore and ten pounds: I give to my ancient ſervant Guilman threeſcore pounds: I give to my ancient ſervant Faldo forty pounds: I give to London my coachman forty pounds: I give to Harſnepp my groom forty pounds: I give to Abraham my footman forty pounds: I give Smith my bayliff and his wife forty pounds: I give to my ancient ſervant Bowes thirty pounds: I give to my ſervant Atkins thirty pounds: I give to old Thomas Gotherum, who was bred with me from a child, thirty pounds: I give to my ſervant Plomer twenty pounds: I give to Daty my cook twenty pounds: I give to Henry Brown twenty pounds: I give to Richard Smith twenty pounds: I give to William Sayers ten pounds: I give to John Large twenty pounds: I give to old goodwife Smith ten pounds: I give to Peter Radford's wife five pounds: I give to every mean ſervant that attends me and is not already named, five pounds.

The general deviſe and bequeſt of all my lands and goods to the performance of my will.

Whereas by former aſſurance made to Sir John Conſtable, knight, my brother-in-law, and to Sir Thomas Crewe, and Sir Thomas Hedley, knights, and ſerjeants at law, and ſome other perſons now deceaſed, all my lands and tenements in Hertfordſhire were by me conveyed in truſt: And whereas of late my fine, and the whole benefit thereof, was by his majeſty's letters patents conveyed to Mr. Juſtice Hutton, Mr. Juſtice Chamberlain, Sir Francis Barneham, and Sir Thomas Crewe, knight, perſons by me named in truſt; I do deviſe by this my will, and declare, that the truſt by me repoſed, as well touching the ſaid lands as upon the ſaid letters patents, is, that all and every the ſaid perſons ſo truſted, ſhall perform all acts and aſſurances that by my executors, or the ſurvivor or ſurvivors of them, ſhall be thought fit and required, for the payment and ſatisfaction of my debts and legacies, and performance of my will, having a charitable care that the pooreſt either of my creditors or legataries be firſt ſatisfied.

I do farther give and deviſe all my goods, chattels, and debts due to me whatſoever, as well my penſion of twelve hundred pounds *per annum* from the king for certain years yet to come, as all my plate, jewels, houſhold ſtuff, goods and chattels whatſoever (except ſuch as by this my laſt will I have eſpecially bequeathed) to my executors, for the better and more ready payment of my debts, and performance of my will.

And becauſe I conceive there will be upon the moneys raiſed by ſale of my lands, leaſes, goods and chattels, a good round ſurpluſage, over and above that which may ſerve to ſatisfy my debts and legacies, and perform my will; I do deviſe and declare, that my executors ſhall employ the ſaid ſurpluſage in manner and form following; that is to ſay, that they purchaſe therewith ſo much land of inheritance, as may erect and endow two lectures in either the univerſities, one of which lectures ſhall be of natural philoſophy, and the ſciences in general thereunto belonging; hoping that the ſtipends or ſalaries of the lectures may amount to two hundred pounds a year for either of them;

and for the ordering of the ſaid lectures and the election of the lecturers from time to time, I leave it to the care of my executors, to be eſtabliſhed by the advice of the lords biſhops of Lincoln and Coventry and Litchfield.

Nevertheleſs thus much I do direct, that none ſhall be lecturer (if he be Engliſh) except he be maſter of arts of ſeven years ſtanding, and that he be not profeſs'd in divinity, law, or phyſick, as long as he remains lecturer; and that it be without difference whether [he] be a ſtranger or Engliſh: and I wiſh my executors to conſider of the precedent of Sir Henry Savil's lectures for their better inſtruction.

I conſtitute and appoint for my executors of this my laſt will and teſtament, my approved good friend the right honourable Sir Humphrey Maye chancellor of his majeſty's duchy of Lancaſter, Mr. Juſtice Hutton, Sir Thomas Crewe, Sir Francis Barneham, Sir John Conſtable, and Sir Euball Thelwall; and I name and intreat to be one of my ſuperviſors, my moſt noble, conſtant and true friend, the duke of Buckingham, unto whom I do moſt humbly make this my laſt requeſt, that he will reach forth his hand of grace to aſſiſt the juſt performance of this my will, and likewiſe that he will be graciouſly pleaſed for my ſake to protect and help ſuch of my good ſervants, as my executors ſhall at any time recommend to his grace's favour: and alſo I do deſire his grace in all humbleneſs to commend the memory of my long continued and faithful ſervice unto my moſt gracious ſovereign, who ever when he was prince was my patron, as I ſhall (who have now, I praiſe God, one foot in heaven) pray for him while I have breath.

And becauſe of his grace's great buſineſs, I preſume alſo to name for another of my ſuperviſors, my good friend and near ally the maſter of the rolls.

And I do moſt earneſtly intreat both my executors and ſuperviſors, that although I know well it is matter of trouble and travail unto them, yet conſidering what I have been, that they would vouchſafe to do this laſt office to my memory and good name, and to the diſcharge of mine honour and conſcience; that all men may be duly paid their own, that my good mind by their good care may effect that good work.

Whatſoever I have given, granted, confirmed, or appointed to my wife, in the former part of this my will, I do now for juſt and great cauſes utterly revoke and make void, and leave her to her right only.

I deſire my executors to have ſpecial care to diſcharge a debt by bond (now made in my ſickneſs to Mr. Thomas Mewtes) he diſcharging me fully towards Sir Robert Dowglaſs and to procure Sir Robert Douglaſs his patent to be delivered to him.

FR. ST ALBAN.

Publiſhed the nineteenth day of December 1625,
in the preſence of

W. Rawley, Ro. Halpeny, Stephen Paiſe,
Will. Atkins, Thomas Kent, Edward Legge.

Decimo tertio die menſis Julii anno Domini milleſimo ſexcenteſimo viceſimo ſeptimo emanavit commiſſio domino Roberto Rich militi, ſupremae curiae cancellariae magiſtror' uni, et Thomae Meautys armigero, creditoribus honorandi viri domini Franciſci Bacon militis, domini Verulam, vicecomitis Sancti Albani, defunct', habentibus etc. ad adminiſtrand' bona jura et credita dicti defuncti Franciſci Bacon defunct' juxta tenorem et effectum ipſius teſtamenti ſupraſcript', eo quod dominus Thomas Crewe miles et dominus Johannes Conſtable miles, executores in hujuſmodi teſtamento nominat' alias vigore mandator' ſive occaſionum a curia praerogat' Cantuar' emanat' ad id legitime et peremptorie citati, onus executionis teſtament' ſupraſcript' in ſe ſuſcipere recuſarunt et denegarunt, ſaltem plus juſte diſtulerunt; eoque quod dominus Humphridus

Maye miles, cancellarius ducatus Lancaſtriae, dominus Ricardus Hutton miles, unus juſtitiariorum domini noſtri regis de banco coram, dominus Euball Thelwall miles, ſupremae curiae cancellariae magiſtrorum unus, et dominus Franciſcus Barnham miles, executores etiam in teſtamento ſupraſcript' nominat', ex certis cauſis eos et amicos ſuos in ea parte juſte moven' oneri executionis teſtament' ſupraſcript' expreſſe renuntiarunt, prout ex actis curiae praedict' plenius liquet et apparet; de bene et fideliter adminiſtrando eadem ad ſancta Dei evangelia in debita juris forma jurat'.

LINTHWAITE FARRANT Regiſtrar' deputat' aſſumpt'

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The End of the Second Volume.


G.R. III